

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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C0803001

Pacific Bell Telephone Company d/b/a AT&T California
(U 1001 C),

Complainant

v.

O1 Communications, Inc. (U 6065 C),

Defendant

Case No. _____

**COMPLAINT OF PACIFIC BELL TELEPHONE COMPANY
D/B/A AT&T CALIFORNIA (U 1001 C)**

Pursuant to California Public Utilities Code § 1702 and Article 4 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of California (“Commission”), Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) (“AT&T California”) hereby avers and complains of O1 Communications, Inc. (U 6065 C) as follows:

I. PRELIMINARY STATEMENT

1. Pursuant to the interconnection agreement between AT&T California and O1 Communications, Inc., calls bound for an information service provider (“ISP-bound traffic”) are not subject to reciprocal compensation; rather, such traffic is subject to the rebuttable presumption pricing regime established by the Federal Communications Commission (“FCC”) in its *ISP Remand Order* (Intercarrier Compensation for ISP-

Bound Traffic, CC Docket No. 99-68, *Order on Remand and Report and Order*, 16 FCC Rcd. 9151 (2001)).

2. AT&T California has determined, through analysis of traffic studies and data provided by O1 Communications, that O1 Communications has over-billed AT&T California by charging reciprocal compensation rates for ISP-bound traffic. Despite AT&T California's requests, O1 Communications has refused or failed to rectify this error.

3. Accordingly, pursuant to 47 U.S.C. § 252 and other applicable law, AT&T California seeks an order enforcing the interconnection agreement by: (i) requiring O1 Communications to bill AT&T California the ISP-bound traffic rate in a manner that is consistent with the results of AT&T California's traffic analysis, including true-up to the date of this complaint; and (ii) to the extent necessary, modifying the parties' interconnection agreement in order to effectuate the future billing of ISP-bound traffic in a manner consistent with the results of AT&T California's traffic analysis.

II. PARTIES

4. AT&T California is a corporation organized and existing under the laws of the State of California with its principal place of business in San Francisco, California.

AT&T California can be reached through counsel:

David J. Miller
Senior Attorney
AT&T Services Legal Department
525 Market Street, Room 2018
San Francisco, CA 94105
(415) 778-1393
davidjmiller@att.com

AT&T California is a local, intra-Local Access Transport Area (“intra-LATA”) toll, and inter-LATA service provider, among other things, within its California service territory.

5. On information and belief, O1 Communications is a competitive local exchange carrier (“CLEC”) providing telecommunications services within the State of California. O1 Communications’ regulatory contact is listed with the Commission as follows:

Alexandra Hanson
Director, Regulatory Affairs
1515 K Street, Suite 100
Sacramento, California 95814
(916) 554-2115

III. JURISDICTION

6. Sections 701 and 1702, *inter alia*, of the California Public Utilities Code provide the Commission with authority to supervise and regulate public utilities, including the authority to enforce interconnection agreements approved by the Commission pursuant to the Telecommunications Act of 1996 (*see* 47 U.S.C. § 252). This complaint seeks Commission enforcement of the interconnection agreement between AT&T California and O1 Communications.

IV. THE INTERCONNECTION AGREEMENT (“ICA”)

7. On November 5, 2003, O1 Communications filed Advice Letter No. 45 with the Commission requesting to sectionally adopt the approved Interconnection Agreement between Pacific Bell Telephone Company and Pac-West Telecomm, Inc., with the exception of the provisions relating to reciprocal compensation. Pacific Bell (now AT&T California) accepted that request. Attachment A hereto is a true and correct

copy of Pacific Bell's acceptance, which provides that it is effective upon Commission approval (or deemed approval) of the negotiated reciprocal compensation amendment.

8. On November 18, 2005, the parties agreed to a negotiated reciprocal compensation amendment. The negotiated reciprocal compensation amendment was submitted for Commission approval on November 22, 2005 via Advice Letter Nos. 27678 & 27678A (the second advice letter was submitted to correct administrative errors) and, on information and belief, was deemed approved pursuant to Resolution ALJ-181 thirty (30) days later. True and correct copies of Advice Letter Nos. 27678 & 27678A, which include the negotiated reciprocal compensation amendment and the Appendix Reciprocal Compensation it adopted, are Attachment B hereto.

9. Collectively, the approved Interconnection Agreement between Pacific Bell Telephone Company and Pac-West Telecomm, Inc. and the negotiated Appendix Reciprocal Compensation constitute the interconnection agreement between AT&T California and O1 Communications (hereinafter, collectively referred to as the "Interconnection Agreement").

10. Pursuant to paragraph 22.2 of the general terms and conditions (a true and correct copy of which is Attachment C hereto), the Interconnection Agreement's initial term was three (3) years. Paragraph 22.2 also provides that, absent written notice that it will not be extended, the Interconnection Agreement continues in full force and effect until terminated by either party. Neither party has provided written notice that the agreement would not be extended, nor has either party terminated the agreement, thus the Interconnection Agreement remains in full force and effect.

11. Under the Interconnection Agreement, the rate that the terminating carrier may charge the originating carrier for the transport and termination of a local call turns on whether or not a local call is made to an information service provider (“ISP”), *i.e.*, whether the call is ISP-bound. The rate for the transport and termination of an ISP-bound call is \$0.0007 per minute of use (“MOU”). (Appendix Reciprocal Compensation, Section 6.4.2.) The rate for the transport and termination of a local call is higher.

12. For interconnection compensation purposes, with respect to ISP-bound traffic, the parties have agreed as follows:

6.5 ISP Traffic Rebuttable Presumption

6.5.1 The Parties agree that there is a rebuttable presumption that all minutes of use exceeding a 3:1 Terminating to Originating Ratio are ISP and Internet-bound calls subject to the compensation terms in this section.

6.5.2 Either party has the right to rebut the 3:1 ISP presumption and determine actual ISP and Internet-bound traffic by any means mutually agreed by the Parties, or by any method approved by the applicable regulatory agency, including the Commission. In the event the Commission approves the rebuttal of the presumption, either in whole or in part, then that rebuttal shall be retroactively applied to August 1, 2003 so long as the Party seeking to rebut the presumption took appropriate action at the Commission to rebut the presumption within 60 days of receiving notice, as described in Section 13.2, of SBC California’s intent to implement the FCC’s plan.

13. On July 11, 2003, AT&T California had invoked the FCC’s ISP terminating compensation plan in California. A true and correct copy of this invocation is Attachment D hereto. Thus, the parties’ rights, remedies, and obligations regarding ISP-bound traffic are as set forth in the FCC’s *ISP Remand Order*. The relevant paragraph (¶ 79) of the *ISP Remand Order* provides:

We understand that some carriers are unable to identify ISP-bound traffic. In order to limit disputes and avoid costly efforts to identify this traffic, we adopt a rebuttable presumption that traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation mechanism set forth in this Order. Using a rebuttable presumption in this context is consistent with the approach that numerous states have adopted to identify ISP-bound traffic or “convergent” traffic (including ISP traffic) that is subject to a lower reciprocal compensation rate. A carrier may rebut the presumption, for example, by demonstrating to the appropriate state commission that traffic above the 3:1 ratio is in fact local traffic delivered to non-ISP customers. In that case, the state commission will order payment of the state-approved or state-arbitrated reciprocal compensation rates for that traffic. Conversely, if a carrier can demonstrate to the state commission that traffic it delivers to another carrier is ISP-bound traffic, even though it does not exceed the 3:1 ratio, the state commission will relieve the originating carrier of reciprocal compensation payments for that traffic, which is subject instead to the compensation regime set forth in this Order. During the pendency of any such proceedings, LECs remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in this Order for traffic above the ratio), subject to true-up upon the conclusion of state commission proceedings.

V. FACTS

14. O1 Communications has billed AT&T California for the transport and termination of local traffic. O1 Communications claims these bills are calculated in accordance with the rebuttable presumption ratio set forth in the *ISP Remand Order*.

15. In other words, on information and belief, the amount of local traffic AT&T California sends to O1 Communications is compared to the amount of local traffic O1 Communications sends to AT&T California. For the increment of local traffic AT&T California sends to O1 Communications that exceeds three (3) times the traffic O1 Communications sends to AT&T California, O1 Communications charges AT&T

California at the lower ISP-bound rate. For traffic under the three (3) times threshold, O1 Communications charges AT&T California at the higher reciprocal compensation rate.

16. Using hypothetical numbers, this concept can be explained as follows: Assume AT&T California sends O1 Communications 4,000 minutes of local traffic and O1 Communications sends AT&T California 1,000 minutes of local traffic. O1 Communications would charge AT&T California the higher reciprocal compensation rate for 3,000 of the minutes O1 Communications terminates (3 times the traffic O1 Communications sends to AT&T California). O1 Communications would charge AT&T California the lower ISP-bound rate for the remaining 1,000 minutes (the total of 4,000 minutes less the 3,000 minutes charged at the reciprocal compensation rate). As a result, under this scenario, O1 Communications would charge AT&T California the higher reciprocal compensation rate for three quarters of the local traffic it terminates for AT&T California.

17. AT&T California has determined that this 3:1 rebuttable presumption does not accurately reflect the amount of ISP-bound traffic AT&T California sends to O1 Communications. Analysis of traffic and data provided by O1 Communications indicates that more than 98 percent of the local traffic that AT&T California delivers to O1 Communications in California is ISP-bound traffic.

VI. DISPUTE RESOLUTION

18. AT&T California has attempted to resolve this issue informally. In October of 2007 AT&T California informed O1 Communications that the 3:1 presumption was no longer appropriate. A series of correspondence and discussions

ensued, from October 2007 to present. The correspondence and discussions were conducted by knowledgeable, responsible representatives of AT&T California in good faith to resolve this dispute.

19. The parties appear to be at an impasse. Accordingly, AT&T California now seeks to resolve this dispute formally through this complaint.

VII. FIRST CAUSE OF ACTION
(Enforcement of rights under the ICA)

20. AT&T California incorporates Paragraphs 1 through 19 by reference as if fully set forth herein.

21. Upon information and belief, the conclusion reached by the traffic analysis studies (*i.e.*, that more than 98 percent of the local traffic AT&T California delivers to O1 Communications is ISP-bound traffic) is an accurate indicator of the amount of traffic AT&T California now delivers, and will deliver to O1 Communications in the future, that is ISP-bound traffic.

22. Given the results of the traffic analysis, the reciprocal compensation bills that O1 Communications has rendered to AT&T California do not accurately reflect the nature of the traffic that AT&T California delivers to O1 Communications. Specifically, such bills are inflated because O1 Communications has billed and continues to bill AT&T California the higher reciprocal compensation rate for ISP-bound traffic. This billing practice is contrary to the Interconnection Agreement and controlling federal law.

23. Accordingly, AT&T California requests that the Commission issue an order requiring O1 Communications to bill AT&T California, including true-up to the

date of this complaint, for the transport and termination of traffic in a manner that is consistent with the results reached by the traffic analysis.

VIII. SECOND CAUSE OF ACTION

(Modification of ICA)

24. AT&T California incorporates paragraphs 1 through 23 by reference as if fully set forth herein.

25. To ensure that O1 Communications, on a going forward basis, accurately bills AT&T California for the transport and termination of traffic in a manner that is consistent with the results reached by the traffic analysis, AT&T California requests that the Commission issue an order requiring the parties to amend the current Interconnection Agreement to implement and effectuate accurate billing on a going-forward basis.

IX. RULE 4.2 COMPLIANCE

26. Categorization: AT&T California proposes that this proceeding be categorized as adjudicatory.

27. Hearings: No evidentiary hearings are necessary because there are no material facts in dispute.

28. Issue: The issue to be considered is whether or not O1 Communications should bill AT&T California consistent with actual traffic patterns rather than the 3:1 presumption.

29. Schedule: AT&T California proposes the following schedule:

Prehearing Conference	April 18, 2008
Scoping Memo Issued	May 2, 2008

Concurrent Opening Comments and Declarations Filed	May 23, 2008
Concurrent Reply Comments and Declarations Filed	June 27, 2008
Presiding Officer's Decision	August 8, 2008
Final Decision	September 4, 2008

X. RELIEF REQUESTED

30. WHEREFORE, for the reasons stated above, AT&T California respectfully requests that the Commission issue an order:

- (a) Requiring O1 Communications to bill AT&T California the ISP-bound traffic rate in a manner consistent with the results of AT&T California's traffic studies, including true-up to the date of this complaint;
- (b) Requiring the parties to modify the Interconnection Agreement in order to effectuate the future billing of ISP-bound traffic in a manner consistent with the results of AT&T California's traffic studies; and
- (c) Granting such other and further relief as the Commission deems just and proper.

DATED: March 4, 2008

Respectfully submitted,

/s/
David J. Miller
Senior Attorney
AT&T Services Legal Department
525 Market Street, Room 2018
San Francisco, CA 94105
(415) 778-1393
davidjmiller@att.com

VERIFICATION

Rhonda Johnson, under penalty of perjury, certifies as follows:

I am an officer, to wit, Vice President – Regulatory Affairs for Pacific Bell Telephone Company, a corporation doing business in California as AT&T California, and make this verification for and on behalf of said corporation. I have read the foregoing **COMPLAINT OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U 1001 C)**, and the contents thereof, and the facts therein stated, are true to the best of my knowledge, information and belief.

Dated at San Francisco, California, this 4th day of March 2008.

/s/
Rhonda Johnson,
Vice President – Regulatory Affairs
Pacific Bell Tel. Co. d/b/a AT&T California

Attachment A

Eddie A. Reed, Jr.
Director-Contract Management
Interconnection & Negotiations

SBC Telecommunications Inc.
Four SBC Plaza, 9th Floor
311 South Akard
Dallas, Texas 75202
Phone 214-464-2456
Fax 214-464-2006



November 18, 2003

VIA FACSIMILE (916-554-2180)

Alexandra Hanson
Director, Regulatory Affairs
O1 Communications, Inc.
1515 K St, Ste 100
Sacramento, CA 95814

Re: O1 Communications, Inc.'s Request to sectionally adopt the Interconnection Agreement between Pacific Bell Telephone Company d/b/a SBC California and Pac-West Telecomm, Inc. in California

Dear Ms. Hanson:

This is in response to O1 Communications, Inc.'s ("CLEC" or "O1") Advice Letter No. 45 dated November 5, 2003 (received on November 5, 2003) relating to CLEC's request to sectionally adopt the approved Interconnection Agreement between Pacific Bell Telephone Company d/b/a SBC California¹ ("SBC California") and Pac-West Telecomm, Inc. ("Pac-West Agreement") with the exception of the provisions relating to reciprocal compensation pursuant to Section 252(i) of the Telecommunications Act of 1996 (the "Act") and Resolution ALJ-181 Rule 7.2.

SBC California accepts CLEC's request to sectionally adopt the Pac-West Agreement with the exception of the reciprocal compensation rates, terms and conditions (and legitimately related terms) ("Reciprocal Compensation Provisions"). This is to confirm that SBC California and CLEC (the "Parties") have also agreed on negotiated Reciprocal Compensation Provisions to replace the exempted provisions of the Pac-West Agreement via a negotiated Amendment ("Negotiated Amendment"). Upon finalization of such Negotiated Amendment, the Parties have agreed to submit the Negotiated Amendment to the California Public Utilities Commission ("Commission") for approval. The Parties further have agreed that the Negotiated Amendment shall not be effective retroactive to August 1, 2003 (as inadvertently requested in O1's Advice Letter No. 45), but that it shall become effective upon approval of the Commission or upon the Commission having deemed approved the Negotiated Amendment. Further, SBC California and O1 hereby agree that the entire agreement between CLEC and SBC California (the O1 Agreement and Negotiated Amendment) will not become effective until the Negotiated Amendment is approved by the Commission or is deemed to have been approved by the Commission. The provisions CLEC has adopted from the Pac-West Agreement will expire on May 15, 2006.

The Pac-West Agreement you have requested to adopt is subject to the following, prior change in law notifications. Previously, in 2003, SBC provided notice arising out of the United States Court of Appeals for the District of Columbia Circuit's opinion in *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA*"), in which the Court granted the petitions for review of the Federal Communications Commission's ("FCC") Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (FCC 99-238) ("the UNE Remand Order") and the FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (FCC 99-355) (rel. Dec. 9, 1999) ("the Line Sharing Order"), and vacated and remanded the UNE Remand and Line Sharing Orders in accordance with its decision. Even more recently, SBC provided notice arising out of the release and effectiveness of the FCC's Triennial Review Order, released on

¹ Pacific Bell Telephone Company, a California corporation, f/k/a SBC Pacific Bell Telephone Company, is now doing business in California as SBC California.

August 21, 2003, on remand from the *USTA* decision and pursuant to the FCC's Notice of Proposed Rulemaking, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 (FCC 01-361) (rel. Dec. 20, 2001) ("TRO"). Accordingly, O1's adoption of the Pac-West Agreement is subject to the previous invocation of the intervening law/change in law provision(s) in the Agreement, and such Agreement may not be adopted without renegotiation of certain provisions of the Agreement pursuant to applicable intervening law/change in law provision(s) in such Agreement as a result of the *USTA* decision² and FCC's TRO. Therefore, as soon as possible, it will be necessary for our companies to commence negotiations to negotiate appropriate successor/replacement provisions in the Pac-West Agreement within the timelines set forth in such Agreement (as applicable).

In accepting this adoption request and incorporating the Negotiated Amendment into the pending O1 Agreement, SBC California does not waive, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this MFN Agreement or which may be the subject of further government review: the United States Supreme Court's opinion in *Verizon v. FCC*, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002); the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced, in its Triennial Review Order, is scheduled to commence in 2004; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally, issued In the Matter of Developing a Unified Intercarrier Compensation Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001; and the Public Utilities Act of Illinois, which was amended on May 9, 2003 to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("Illinois Law") (collectively "Government Actions"). Notwithstanding anything to the contrary in this MFN Agreement (including any amendments to this MFN Agreement), SBC California shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. The preceding includes without limitation that SBC California shall not be obligated to provide combinations (whether considered new or existing) or commingled arrangements involving SCB California network elements that do not constitute required UNEs under 47 U.S.C. § 251(c)(3) (including those network elements no longer required to be so unbundled), or where UNEs are not requested for permissible purposes. The Parties further acknowledge and agree that SBC California has exercised its option to adopt the FCC ISP terminating compensation plan ("FCC Plan") in California and as of the date of that election by SBC California, the FCC Plan shall apply to this Agreement, as more specifically provided for in the Negotiated Amendment. It is SBC California's position that this MFN Agreement is subject to the change of law provisions permitted under the Federal Rules except to the extent otherwise expressly provided in the MFN Agreement and also is subject to any appeals involving the MFN Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the MFN Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by the MFN Agreement, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). In such event, it is SBC California's position and intent that the Parties immediately incorporate changes from the

² Negotiations pursuant to SBC's 2003 *USTA* notice were postponed, in part because of the pendency of the TRO. SBC's 2003 invocation of the *USTA* change in law event has continued and SBC plans to seek modifications of affected terms of the Agreement(s) pursuant to that invocation as well as the TRO.

Separate Agreement, made as a result of any such action into this MFN Agreement. Where revised language is not immediately available, it is SBC California's position and intent that the Parties shall expend diligent efforts to incorporate the results of any such action into this MFN Agreement on an interim basis, but shall conform this MFN Agreement to the Separate Agreement, once such changes are filed with the appropriate state commission. In addition, to the extent this MFN Agreement is in effect in Illinois, the Parties agree that any ICC orders implementing the Illinois Law, including, without limitation, the ICC Rates, shall automatically apply to this MFN Agreement (for the state of Illinois only) as of the effective date of any such order(s) upon Written Notice, and as soon as practical thereafter, SBC Illinois shall begin billing CLEC the ICC Rates; provided, however, the Parties acknowledge and agree that no later than sixty (60) days from the Written Notice, the Parties will execute a conforming Amendment to this MFN Agreement so that the MFN Agreement accurately reflects the ICC Rates and SBC Illinois will issue any adjustments, as needed, to reflect that the ICC Rates became effective between the Parties as of the effective date of the applicable ICC order(s). With respect to all other Written Notices hereunder, any disputes between the Parties concerning the interpretations of the actions required or the provisions affected shall be handled under the Dispute Resolution Procedures set forth in this MFN Agreement.

Finally, SBC California notes that pursuant to the SBC/Ameritech Merger Conditions, approved by the FCC its Memorandum Opinion and Order, CC Docket 98-141, rel. (October 8, 1999), SBC/Ameritech was obligated to transition the provisioning of certain Advanced Services, as that term is defined in such Conditions, to one or more separate Advanced Services affiliates under certain conditions. Because SBC/Ameritech has transitioned such Advanced Services to its structurally separate affiliate(s), SBC California has no further obligation to make available such Advanced Services for resale or to interconnect its Frame Relay network with CLEC and has no further obligation to make available such Advanced Services for resale or to provision Frame Relay interconnection under the rates, terms and conditions set forth in the MFN Agreement (to the extent applicable).

It is SBC California's position that its MFN Agreement (including all attachments thereto) and every interconnection, service and network element provided hereunder, is subject to all rates, terms and conditions contained in the MFN Agreement (including all attachments thereto) that are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the General Terms and Conditions of this MFN Agreement are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided under the MFN Agreement.

It is with this understanding and on these terms that SBC California is hereby accepting O1's request to opt into portions of the Pac-West Agreement. Should the foregoing not accurately reflect O1's understanding of the Parties' agreement, please contact Nicola Erbe by facsimile (415-957-8744) on or before 5:00 p.m. P.S.T. on November 19, 2003. If SBC California does not hear from you on or before that time, SBC California will assume that the Parties have reached a final agreement as to O1's adoption request based upon the terms and conditions set forth herein.

Sincerely,

Eddie A. Reed, Jr.
Director-Contract Management

cc: John M. Leutza, Director
Telecommunications Division
California Public Utilities Commission
505 Van Ness Avenue, 3rd Floor
San Francisco, CA 94102

Attachment B

**CALIFORNIA PUBLIC UTILITIES
COMMISSION**
**Advice Letter Filing Summary Sheet
(PAL)**

(Date Filed / Received Stamp by CPUC Industry Division)

Date AL served on parties: November 22, 2005

Company Name: SBC California		CPUC Utility Number <u>U-1001 C</u>	
Address: 525 Market Street, #1944		<input checked="" type="checkbox"/> LEC <input type="checkbox"/> IEC <input type="checkbox"/> IER	
City, State, Zip: San Francisco, CA 94105		<input type="checkbox"/> CLC <input type="checkbox"/> CLR <input type="checkbox"/> CMRS	
Filing #: 27678	Requested Effective Date: December 22, 2005	NRF Category (if applicable):	
Name:	Email Address:	Phone No.:	Fax No.:
Filer M. Noone	regtss@sbc.com	(415) 778-1299	(415) 543-3766
Certif.	regtss@sbc.com	(415) 778-1299	No. Tariff Sheets:

(Name, email address & Phone and FAX numbers are Required for "Filer")

Annual Revenues: \$ _____ **Tariff Schedules:** _____ **Keyword:** Interconnection Agreement

Subject of filing
(Service(s) included) Amendment No. 15 with O1 Communications, Inc.

Authorization for filing
(Resolution #, Decision #, etc.) ALJ-181

Related service
(Other service, replacement AL filing) _____

Rate Element(s) affected and % change
(Non-recurring and / or recurring) _____

Notes/Comments
(Other information & reference to advice letter, etc.)

File Protest and/or Correspondence to:
Director, Telecommunications Division
505 Van Ness Ave., San Francisco, CA 94102
and if you have email capability, ALSO email protest to:
TD_PAL@cpuc.ca.gov
Protest also must be served on utility:
(see utility advice letter for more information)

LEC = Local Exchange Carrier
IEC = Interexchange Carrier
CLC = Competitive Local Carrier
IER = Interexchange Carrier Reseller
CLR = Competitive Local Carrier Reseller
CMRS = Commercial Mobile Radio Service

(FOR CPUC USE ONLY)

<input type="checkbox"/> WTS Required <input type="checkbox"/> Resolution Required <input type="checkbox"/> Executive Action Resolution Req'd. <input type="checkbox"/> TD Suspension on: ___ / ___ / ___ <input type="checkbox"/> Comm. Suspension on: ___ / ___ / ___ Resolution No.: T - _____ <i>Rev. 04/01/05</i>	Supv. / Analyst _____ / _____ Due Date to Supv.: _____ Analyst Completion Date: _____ Supervisor Approval Date: _____ AL / Tariff Effective Date: _____ Notes: _____
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November 22, 2005

U 1001 C
Advice Letter No. 27678

Public Utilities Commission of the State of California

SBC California ("SBC") attaches for filing Amendment No. 15 to the Local Interconnection Agreement ("Agreement") with O1 Communications, Inc., which became effective January 3, 2000, pursuant to Rule 7. of Resolution ALJ-181, and Advice Letter No. 3 of O1 Communications, Inc., dated January 7, 2000. This Amendment, attached to the advice letter, is submitted under the review procedure authorized in Rule 6.2 of ALJ-181, that states that any amendments to Interconnection Agreements shall become effective 30 days from the filing date.

O1 Communications, Inc. and SBC have negotiated this Amendment to the Agreement in good faith.

This Amendment adds the Core Communications Petition for Forbearance to the Agreement.

In compliance with G.O. 96-A, copies of this advice letter and agreement are being mailed to all LECs and to other interested parties requesting such notification. Also in compliance, we are mailing copies to parties on the service list for Resolution ALJ-181, R.93-04-003/I.93-04-002/R.95-04-043/I.95-04-044 (service list attached). We are also mailing a copy of this advice letter to each customer named in the contract. In addition, we are sending an e-mail copy of this advice letter to parties as requested. This advice letter with attachments may be viewed on SBC California's Web-Site <https://ebiznet.sbc.com/calreg/>. If there are any questions regarding this advice letter call 415-778-1299.

Anyone may protest this advice letter to the California Public Utilities Commission. The protest must set forth the specific grounds on which it is based. Any such protest may only address provisions of this Agreement that are alleged to be anticompetitive or unduly discriminatory. A protest must be made in writing and received within twenty (20) days of the date this advice letter was filed with the Commission. The address for mailing or delivering a protest to the Commission is:

Director, Telecommunications Division
505 Van Ness Avenue, Room 3210
San Francisco, CA 94102

If you have e-mail capability, the protest must also be e-mailed to the Telecommunications Division at TD_PAL@cpuc.ca.gov.

A copy of the protest must be mailed or faxed (415.543.3766) to SBC California on the same date it is mailed or delivered to the Commission. If this advice letter was served via e-mail, the protest must be served to SBC California via e-mail at regtss@sbc.com.

The address for mailing, delivering, or faxing a protest to SBC California is:

Rhonda Johnson
Executive Director
SBC California
140 New Montgomery, Room 2511
San Francisco, CA 94105
FAX Number: 415.543.3766

and

Contract Administration
Attn: Contract Management
Southwestern Bell Communications
Four Bell Plaza, 9th Floor
311 S. Akard,
Dallas, TX 75202-5398

The address for mailing or delivering a protest to O1 Communications, Inc. is:

Keenan Davis
Attorney
1515 K Street, Suite 100
Sacramento, CA 95814

We would like this filing to become effective December 22, 2005.

Yours truly,

SBC California

(Signature on File)

Executive Director

Attachments

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

Proceeding: I9504044 - PUC - OII INTO COMPE

Filer: CPUC - LOCAL EXCHANGE SERVICE

List Name: 271/ARBITRATION

Last changed: November 21, 2005

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[Back to Service Lists Index](#)

Appearance

MICHAEL J. THOMPSON
ATTORNEY AT LAW
WRIGHT & TALISMAN, PC
1200 G STREET, N.W., STE 600
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**AMENDMENT TO
INTERCONNECTION AGREEMENT
BETWEEN
PACIFIC BELL TELEPHONE COMPANY d/b/a SBC CALIFORNIA
AND
O1 COMMUNICATIONS, INC.**

This Amendment is to the Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Amendment") by and between Pacific Bell Telephone Company d/b/a SBC California ("SBC California") and O1 Communications, Inc. ("O1"), (collectively, the "Parties").

WHEREAS, the Federal Communications Commission ("FCC") released on October 18, 2004 its Order in *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171 ("*Core Communications Order*") granting forbearance from enforcement of the growth cap and new market restrictions set forth in the *ISP Remand Order*¹ on ISP and ISP-Bound traffic;

WHEREAS, on September 23, 2004 the California Public Utilities Commission ("CPUC") adopted D.04-09-063 in the consolidated proceeding A.01-02-024, A.01-02-035, A.02-02-031, A.02-02-032, A.02-02-034 and A.02-03-002 which changed the rates associated with certain reciprocal compensation elements applicable to section 251(b)(5) traffic ("*California UNE Relook Order*");

WHEREAS, on November 5, 2003, O1 requested to adopt the interconnection agreement between Pac West Telecomm, Inc. and SBC California dated May 15, 2003 ("PacWest Agreement") pursuant to Section 252 (i) of the Telecommunications Act of 1996 and Resolution ALJ- 181, Rule 7;

WHEREAS, by letter of November 18, 2003, SBC California accepted O1's request for adoption of the PacWest Agreement except for the reciprocal compensation rates, terms and conditions (and legitimately related terms) and the Parties agreed to replace the exempted provisions with a negotiated reciprocal compensation amendment ;

WHEREAS, pursuant to the change of law provision the Parties agree to remove the growth cap and new market restrictions as set forth in the *Core Communications Order* and incorporate the rates for certain reciprocal compensation elements for section 251(b)(5) Traffic as set forth in the *California UNE Relook Order*;

WHEREAS, the parties agree to amend the provisions adopted from the PacWest Agreement with the negotiated Appendix Reciprocal Compensation attached hereto as Exhibit A and incorporated herein by reference;

WHEREAS, pursuant to Resolution ALJ 181, this filing will become effective, absent rejection of the advice letter by the CPUC, thirty (30) days after the filing date of the Advice Letter to which this Amendment is appended ("Effective Date").

NOW, THEREFORE, in consideration of the foregoing, and the promises and mutual agreements set forth in the Agreement and in this Amendment, the Agreement is hereby amended, as reflected in the attached Exhibit A, to ensure that the terms and conditions of the Agreement related to growth caps and new market restrictions for ISP and ISP-Bound traffic and rates associated with certain rate elements for section 251(b)(5) traffic are conformed so as to be consistent with applicable federal and state law:

1. Nothing in this Amendment shall be deemed to amend or extend the term of the Interconnection Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement.
2. Notwithstanding any contrary provision in the Interconnection Agreement, this Amendment, or any SBC California tariff, nothing contained in the Interconnection Agreement, this Amendment, or any SBC California

¹ *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (*ISP Remand Order*).

tariff shall limit SBC California's right to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the CPUC, the FCC, any court or any other governmental authority related to, concerning, or that may affect SBC California's obligations under the Interconnection Agreement, this Amendment, any SBC California tariff, or Applicable Law.

3. Any performance measures and remedies identified in the Interconnection Agreement apply solely to UNEs which SBC California is obligated to offer under Section 251(c)(3) of the Act. If an element is no longer required to be provided as an unbundled network element under this Agreement by virtue of this Amendment, SBC California will have no obligation to report on or pay remedies for any measures associated with such element, notwithstanding any language to the contrary in the Agreement.
4. In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Interconnection Agreement or which may be the subject of further government review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36) including, without limitation, the FCC's MDU Reconsideration Order (FCC 04-191) (rel. Aug. 9, 2004) and the FCC's Order on Reconsideration (FCC 04-248) (rel. Oct. 18, 2004), and the FCC's Biennial Review Proceeding; the FCC's Order on Remand (FCC 04-290), WC Docket No. 04-312 and CC Docket No. 01-338 (rel. Feb. 4, 2005) ("TRO Remand Order"); the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Interconnection Agreement (including this and any other amendments to the Interconnection Agreement), SBC California shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Interconnection Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (rel. April 21, 2004). The Parties acknowledge and agree that SBC ILEC has exercised its option to adopt the FCC ISP terminating compensation plan ("FCC Plan") in California and as of the date of that election by SBC California, the FCC Plan shall apply to the Interconnection Agreement, as more specifically provided for in this Amendment. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Interconnection Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Interconnection Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved

pursuant to the dispute resolution process provided for in this Interconnection Agreement.

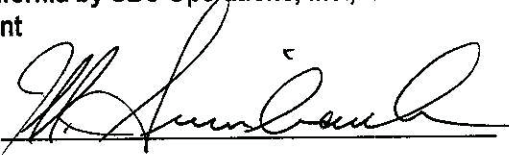
5. This Amendment shall be filed with and subject to approval by the CPUC, and will become effective upon approval by the Commission or upon being deemed approved by operation of law.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this 18th day of November, 2005, by SBC California, signing by and through its duly authorized representative, and O1 Communications, Inc., signing by and through its duly authorized representative.

O1 Communications, Inc.

Pacific Bell Telephone Company d/b/a SBC California by SBC Operations, Inc., its authorized agent

By: 

By: 

Name: R Keenan Davis
(Print or Type)

Name: Mike Auinbauh
(Print or Type)

Title: General Counsel
(Print or Type)

Title: AVP - Local Interconnection Marketing

Date: 11/4/2005

Date: NOV 18 2005

APPENDIX RECIPROCAL COMPENSATION (AFTER FCC ORDER NO. 01-131)

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APPENDIX RECIPROCAL COMPENSATION

1. APPENDIX SCOPE

- 1.1 This Appendix sets forth the terms and conditions for Reciprocal Compensation of intercarrier telecommunications traffic between SBC California and O1 Communications, Inc., but only to the extent they are interconnected and exchanging calls pursuant to a fully executed, underlying Interconnection Agreement approved by the Commission.
- 1.2 The compensation arrangement for the joint provision of Feature Group A (FGA) Services, i.e.: to IXC customers of switched access service, shall be subject to the underlying Interconnection Agreement or as otherwise mutually agreed by the Parties.
- 1.3 The provisions of this Appendix apply to calls originated over the originating carrier's facilities or over Unbundled Network Elements.
- 1.4 The provisions of this Appendix do not apply to traffic originated over services provided under local Resale service.
- 1.5 Any inconsistencies between the provisions of this Appendix and other provisions of the underlying Interconnection Agreement shall be governed by the provisions of this Appendix.
- 1.6 The Parties agree that this Appendix governs the exchange, routing and rating of all intercarrier traffic to Internet Service Providers (ISPs) and other Internet-bound traffic between SBC California and CLEC in this state. The terms "ISPs" and "Internet" shall be given the same meaning as used in the underlying Agreement, and if not defined there, shall be given the same meaning as found in the Federal Communications Commission's (FCC's) Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic (the "ISP Compensation Order") and the Federal Telecommunications Act of 1996. In the event that the ISP Compensation Order is vacated, overturned, or otherwise becomes no longer legally effective, as of that date, the terms "ISPs" and "Internet" shall be as defined by the Commission.

2. SBC CALIFORNIA DESIGNATIONS

- 2.1 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company, and Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 2.2 **SBC-13STATE** - As used herein, **SBC-13STATE** means the applicable above listed ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 2.3 **SBC-12STATE** - As used herein, **SBC-12STATE** means the applicable above listed ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 2.4 SBC California - As used herein, SBC California means the applicable above listed ILEC doing business in California.

3. CLASSIFICATION OF TRAFFIC

- 3.1 Telecommunications traffic exchanged between CLEC and SBC California will be classified as either Local Calls, Transit Traffic, Optional Calling Area Traffic, IntraLATA Toll Traffic, or InterLATA Toll Traffic. For purposes of this Appendix, calls to ISPs will be rated and routed according to these same classifications, depending on definition of Local toll and transit Calls by the California Public Utilities Commission ("CPUC" or "Commission").
- 3.2 For purposes of this Appendix, the parties agree that SBC California has invoked the FCC's ISP pricing plan as ordered in FCC 01-131 as of August 1, 2003, and that prior to that date the Parties agree that Local Calls, and locally dialed ISP Calls, will be compensated at the same rates and rate structures, so long as the NPA-NXX of the originating end user of one Party and the NPA-NXX of the terminating end user of the other Party are:
 - a. both assigned to the same SBC California Local Exchange Area as defined by the SBC California Local (or "General") Exchange Tariff on file with the CPUC; or
 - b. both assigned to neighboring SBC California Local Exchange Areas, or within an SBC California exchange and an Independent LEC exchange, that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes.
- 3.3 The Parties agree that, notwithstanding the classification of traffic under this Appendix, either Party is free to define its own retail local calling area(s) for purposes of its provision of telecommunications services to its end users.
- 3.4 When an End User served by one Party originates a Local Call to an End User served by the other Party, the originating Party shall compensate the terminating Party for the transport and termination of Local Calls at the rate(s) and rate elements provided in this Appendix and Appendix Pricing.
- 3.5 If this Agreement is the initial agreement between the Parties, then the Parties' obligation under this Agreement to pay reciprocal compensation to each other shall commence on the date the Parties agree that the interconnection is complete (i.e., each Party has established its originating trunks as well as all ancillary traffic trunking such as Operator Services, 911 or Mass Calling trunks).
- 3.6 The compensation arrangements set forth in this Appendix are not applicable to Exchange Access traffic or any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission, with the exception of calls to ISPs, which are addressed in this Appendix. All Exchange Access traffic and intraLATA Toll Traffic shall continue to be governed by the terms and conditions of each Party's applicable federal and state tariffs.
- 3.7 Neither party shall be prohibited from designating different rating and routing points for the delivery of telephone calls for purposes of providing customers a local presence within a foreign exchange. Calls shall be rated in reference to the rate center of the assigned NXX prefix of the calling and called parties' numbers. Effective upon February 1, 2004, SBC California is entitled to receive tandem switching and transport compensation for its facilities used in the carriage of traffic from the originating rate center (local NXX) to the rate area associated with where CLEC delivers traffic to its customer, less 16 miles. To avoid paying the costs associated with transport from origination to their point of interconnection, CLEC shall disclose to SBC California the percentage of disparately rated and routed traffic that was returned and terminated within the rate area where the local call originated. In addition, CLEC may avoid paying the costs associated with transport from origination to their point of interconnection if CLEC establishes a point of interconnection at

the appropriate local or access tandem serving the rate center or at any mutually agreed end office within the rate center where CLEC has established a dialable telephone number local to such rate center or ports any number established by other local exchange carriers (including ILEC companies) within such rate center.

- 3.8 Private Line Services include private line-like and special access services and are not subject to local reciprocal compensation. Private Line Services are defined as dedicated Telecommunications channels provided between two points or switched among multiple points and are used for voice, data, audio, or video transmission.
- 3.9 Reciprocal Compensation only applies to local switched traffic that is originated on one Party's network and is terminated through the other Party's terminating switch. All traffic that is delivered to SBC California, CLEC or an ISP and is not terminated through the other Party's terminating switch is not subject to reciprocal compensation.
- 3.10 Traffic that is delivered to a CLEC or ISP via Digital Subscriber Line (DSL) service is not subject to intercarrier compensation.

4. RESPONSIBILITIES OF THE PARTIES

- 4.1 Each Party to this Appendix will be responsible for the accuracy and quality of its data as submitted to the respective Parties involved.
- 4.2 Where SS7 connections exist, each Party will include in the information transmitted to the other for each call being terminated on the other's network, where available, the original and true Calling Party Number (CPN).
- 4.3 If one Party is passing CPN but the other Party is not properly receiving information, the Parties will work cooperatively to correct the problem.
- 4.4 Where SS7 connections exist, calls originated by one party and terminated by the other, if the percentage of calls passed with CPN is greater than ninety percent (90%), all calls exchanged without CPN information will be billed as either Local Traffic or intraLATA Toll Traffic in direct proportion to the minutes of use (MOU) of calls exchanged with CPN information. If the percentage of calls passed with CPN is less than ninety percent (90%), all calls passed without CPN will be billed as intraLATA switched access.
- 4.5 Where the Parties are performing a transiting function as defined in Section 8.0 below, the transiting Party will pass the original and true CPN if it is received from the originating third party. If the original and true CPN is not received from the originating third party, the Party performing the transiting function cannot forward the CPN and will not be billed as the default carrier. CLEC and SBC California agree to exchange such reports and/or data as provided in this Appendix in Section 12.2 to facilitate the proper billing of traffic. Additionally, where the originating carrier number ("OCN") is not available, the transiting Party will use best efforts from available sources to identify the originating carrier for each transit call that lacks OCN.
- 4.6 If the original and true CPN is not received from the originating third party, where available, the Party performing the transiting function shall provide the terminating party with the following information: the interconnection trunk group between the transiting Party and the originating party using trunking nomenclature that will be recognized by the originating party, the identity of the originating party connected to that originating trunk group and the quantity of unidentified minutes received by the transiting Party over the originating trunk group.

5. INTENTIONALLY OMITTED

6. LOCAL AND ISP TRAFFIC – CALIFORNIA ONLY

6.1 Termination of Local Calls. The following rates apply to Local Calls exchanged by the parties:

(a) Tandem Switching - (where used) compensation for the use of tandem switching functions (which includes subtending tandem)

- (i) \$.000629 Setup per Call, and
- (ii) \$.000453 per minute;

(b) Common Transport (where used) - compensation for the transmission facilities between the local tandem and the End Offices subtending that tandem:

- (i) \$0.00125 Fixed Mileage per minute; and
- (ii) \$0.0002 Variable Mileage per minute, per mile;
- (c) End Office Switching:
 - (i) \$0.001448 Setup per Call;
 - (ii) \$0.001360 per minute.

6.1.1 Pursuant to the California PUC Decision in Application 02-03-059, the specific architecture of CLEC's network provides for the following rate application of Local Calls originated by SBC California and terminated by CLEC. Based on CLEC's network architecture and subject to SBC California's right to invoke the terminating compensation plan in accordance with Sections 6.3 and 13, the Parties agree that 90% of all Local Calls originated by SBC California and terminated to CLEC shall be paid only at the Tandem Switching rate and End Office Switching rate elements, and 10% of the Local Calls originated by SBC California and terminated by CLEC shall be paid the Tandem Switching, Common Transport and End Office Switching rate elements.¹

6.1.2 The Parties agree to utilize the above Commission approved OANAD reciprocal compensation rates for Local Traffic (the rates in Section 6.1 above do not apply to ISP Traffic) until such time as the California Public Utilities Commission approves new OANAD reciprocal compensation rates. If the CPUC approves new reciprocal compensation rates, the Parties agree to utilize those rates as of the effective date of that Docket's order.

6.2 The Parties agree that effective August 1, 2003 SBC California has made an offer to all carriers in California with which SBC California trades local traffic under section 251(b)(5) of the Federal Telecommunications Act of 1996 (known as the "Mirroring Rule" in para. 89 of the FCC ISP Compensation Order). The rates, terms and conditions set forth below represent the Parties' understanding of how the Parties will implement the FCC Plan. The Parties further agree that the rates, terms and conditions set forth in Section 6.2 through 6.9 of this Reciprocal Compensation Appendix including, but not limited to, the rate for ISP and Internet-bound traffic, shall apply to ISP and Internet-bound traffic exchanged between the Parties beginning August 1, 2003, until either the contract expires, the FCC issues a Final Order in its Notice of Proposed Rulemaking *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92 (established in FCC Order No. 01-132, April 27, 2001), or the ISP Compensation Order is vacated, overturned, or otherwise

¹ In the event that any other CLEC ("Requesting CLEC") seeks to obtain any provisions contained in this Appendix, or like provisions, the Parties understand and agree that the end office termination rates set forth in Sections 6.1 of this Appendix and in the Appendix Pricing will apply to all calls originated by SBC California and terminated by Requesting CLEC unless and until the Requesting CLEC establishes that its switch(s) meet the geographic coverage test in accordance with Federal and state laws, judicial orders, rules and regulations.

becomes no longer legally effective. In the event that the ISP Compensation Order or any portion thereof related to any of the rates set forth in this Appendix is vacated, overturned, or otherwise becomes no longer legally effective, as of that date the rates set forth in Section 6.1 shall again apply.

6.3 Intentionally Omitted.

6.4 Descending Reciprocal Compensation Rate Schedule for presumed ISP and Internet-bound Calls Within calls within Local Calling Areas:

6.4.1 The rates, terms, conditions in this section apply only to the termination of presumed ISP and Internet-bound Calls Within calls within Local Calling Areas as defined in section 3.2.

6.4.2 The Parties agree to compensate each other for the termination of presumed ISP and Internet-bound calls rated within the Local Calling Area on a minute of use basis, according to the following rate schedule:

June 15, 2003 and later: \$0.0007 per minute

6.4.3 Payment of Reciprocal Compensation on presumed ISP and Internet-bound traffic will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch. Where the terminating party utilizes a hierarchical or two-tier switching network, the Parties agree that the payment of these rates in no way modifies, alters, or otherwise affects any requirements to establish Direct End Office Trunking, or otherwise avoids the applicable provisions of the underlying Agreement and industry standards for interconnection, trunking, Calling Party Number (CPN) signaling, call transport, and switch usage recordation.

6.5 ISP Traffic Rebuttable Presumption

6.5.1 The Parties agree that there is a rebuttable presumption that all minutes of use exceeding a 3:1 Terminating to Originating Ratio are ISP and Internet-bound calls subject to the compensation terms in this section.

6.5.2 Either party has the right to rebut the 3:1 ISP presumption and determine actual ISP and Internet-bound traffic by any means mutually agreed by the Parties, or by any method approved by the applicable regulatory agency, including the Commission. In the event the Commission approves the rebuttal of the presumption, either in whole or in part, then that rebuttal shall be retroactively applied to August 1, 2003 so long as the Party seeking to rebut the presumption took appropriate action at the Commission to rebut the presumption within 60 days of receiving notice, as described in Section 13.2, of SBC California's intent to implement the FCC's plan.

7. **NON-LOCAL CALL TERMINATION**

7.1 The Parties recognize and agree the rates and rate structure in section 6 above do not apply to calls that fit the underlying Agreement's definitions of:

- (i) Transit Traffic
- (ii) Optional EAS Traffic (defined as: Optional Toll Calling Plans)
- (iii) IntraLATA Interexchange Traffic
- (iv) InterLATA Interexchange Traffic
- (v) 800, 888, 877, ("8yy") Traffic
- (vi) Feature Group A Traffic
- (vii) Feature Group D Traffic

- 7.2 The Parties agree that, for the purposes of this Appendix, either Party's end users remain free to place ISP calls under any of the above classifications. To the extent such calls are placed, the Parties agree that section 6 above does not apply, and that the Agreement's rates, terms and conditions for IntraLATA and/or InterLATA calling shall apply, including but not limited to rating and routing according to terminating Party's Exchange Access intrastate and/or interstate tariffs.
- 7.3 The Parties agree that physical interconnection, routing, and trunking of ISP calls on an Inter-Exchange basis, either IntraLATA or InterLATA, shall be as specified in the Agreement for all other traffic exchanged, including but not limited to, the need to route over Meet Point Billed trunks.

8. TRANSIT TRAFFIC COMPENSATION

- 8.1 Transiting Service allows one Party to send or receive Local, Optional, intraLATA Toll Traffic, and 800 intraLATA Toll Traffic to or from a third party network through the other Party's tandem. A Transiting rate element applies to all MOUs between a Party and third party networks that transits a SBC California network. The originating Party is responsible for payment of the appropriate rates unless otherwise specified. The Transiting rate element is only applicable when calls do not originate with (or terminate to) the transit Party's End User. The rates that SBC California shall charge for transiting CLEC traffic are outlined in Appendix Pricing.
- 8.2 The Parties agree to establish appropriate billing relationships directly with third party Telecommunications Carriers, as set forth in section 5.4 of the General Terms and Conditions of this Agreement. In the event one Party originates traffic that transits the second Party's network to reach a third party Telecommunications Carrier with whom the originating Party does not have a traffic Interexchange agreement, then originating Party will indemnify the second Party against any and all charges levied by such third party telecommunications carrier, including any termination charges related to such traffic and any attorneys fees and expenses. The terminating party and the tandem provider will bill their respective portions of the charges directly to the originating party.
- 8.3 CLEC shall not bill SBC California for terminating any Transit traffic, whether identified or unidentified, i.e., whether SBC California is sent CPN or is not sent CPN by the originating company.

9. INTRALATA 800 TRAFFIC

- 9.1 The Parties shall provide to each other intraLATA 800 Access Detail Usage Data for Customer billing and intraLATA 800 Copy Detail Usage Data for access billing in Exchange Message Interface (EMI) format. On a monthly basis the Parties agree to provide this data to each other at no charge. In the event of errors, omissions, or inaccuracies in data received from either Party, the liability of the Party providing such data shall be limited to the provision of corrected data only. If the originating Party does not send an End User billable record to the terminating Party, the originating Party will not bill the terminating Party any access charges for this traffic.
- 9.2 Inter-carrier compensation for IntraLATA 800 Traffic calls is billed to and paid for by the called or terminating Party, regardless of which Party performs the 800 query.

10. MEET-POINT-BILLING (MPB) AND SWITCHED ACCESS TRAFFIC COMPENSATION

- 10.1 Inter-carrier compensation for Switched Access Traffic shall be on a MPB basis as described below.
- 10.2 The Parties will establish MPB arrangements in order to provide Switched Access Services to IXC in accordance with the MPB guidelines adopted by and either contained in, or upon approval to be added in

future to the Ordering and Billing Forum's MECOD and MECAB documents.

- 10.3 Billing to Interexchange Carriers (IXCs) for the Switched Exchange Access Services jointly provided by the Parties via MPB arrangements shall be according to the multiple bill/single tariff method. As described in the MECAB document, each Party will render a bill in accordance with the applicable tariff for that portion of the service it provides. Each Party will bill the applicable network access service rates to the IXC. The network interconnection charge (NIC), if any, will be billed by the Party providing the end office function. For the purpose of this Appendix, CLEC is the Initial Billing Company (IBC) and SBC California is the Subsequent Billing Company.
- 10.4 The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.
- 10.5 As detailed in the MECAB document, the Parties will, in accordance with appropriate billing cycle intervals defined herein, exchange all information necessary to accurately, reliably and promptly bill IXCs for Switched Access Services traffic jointly handled by the Parties via the Meet Point arrangement. Information shall be exchanged in a mutually acceptable electronic file transfer protocol. Where the EMI records cannot be transferred due to a transmission failure, records can be provided via a mutually acceptable medium. The initial billing company (IBC) will provide the information to the subsequent billing company within ten (10) working days of sending the IBC's bills. The exchange of records to accommodate MPB will be on a reciprocal, no charge basis.
- 10.6 MPB shall also apply to all jointly provided MOU traffic bearing the 900, or toll free NPAs (e.g., 800, 877, 866, 888 NPAs, or any other non-geographic NPAs) which may likewise be designated for such traffic in the future where the responsible party is an IXC or ESP. When SBC California performs 800 database queries, SBC California will charge the end office provider for the database query in accordance with standard industry practices.
- 10.7 Each Party shall coordinate and exchange the billing account reference (BAR) and billing account cross reference (BACR) numbers for the Meet Point Billing service. Each Party shall notify the other if the level of billing or other BAR/BACR elements change, resulting in a new BAR/BACR number.
- 10.8 For purposes of this Appendix the Party to whom the End Office Switch belongs is the IBC and the Party to whom the Tandem Office Switch belongs is the secondary billing company. The secondary billing company will provide the IBC with the Exchange Access detailed usage data within thirty (30) days of the recording date. The IBC will provide to the secondary billing company the Exchange Access summary usage data within ten (10) working days of the IBC's bill date to the IXC and/or ESP. SBC California acknowledges that currently there is no charge for Summary Usage Data SBC California acknowledges that currently there is no charge for Summary Usage Data Records but that such a charge may be appropriate. At CLEC's request, SBC California will negotiate a mutual and reciprocal charge for provision of Summary Usage Data Records.
- 10.9 SBC California and CLEC agree to provide the other Party with notification of any discovered errors within ten (10) business days of the discovery.
- 10.10 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) consecutive months of prior usage data.

11. INTRALATA TOLL TRAFFIC COMPENSATION

11.1 For intrastate intraLATA toll traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate Access Service Tariff. For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party's interstate Access Service Tariff. Common transport, (both fixed and variable), as well as tandem switching rates apply only in those cases where a Party's tandem is used to terminate traffic.

12. BILLING FOR MUTUAL COMPENSATION — SBC CALIFORNIA

12.1 In SBC California, each Party will calculate terminating interconnection minutes of use based on standard Automatic Message Accounting (AMA) recordings made within each Party's network. These recordings are the basis for each Party to generate bills to the other Party. For purposes of reciprocal compensation only, measurement of minutes of use over Local Interconnection Trunk Groups shall be in actual conversation seconds. The total conversation seconds over each individual Local Interconnection Trunk Group will be totaled for the entire monthly bill and then rounded to the next whole minute.

12.2 Each Party will provide to the other, within fifteen (15) calendar days, after the end of each quarter, a usage report with the following information regarding traffic terminated over the Local Interconnection Trunks:

12.2.1 Total traffic volume described in terms of minutes and messages and by call type (local, toll, and other) terminated to each other over the Local Interconnection Trunk Groups, and Percent Local Usage (PLU) is calculated by dividing the Local MOU delivered to a party for termination by the total MOU delivered to a Party for termination.

12.2.2 Upon thirty (30) days written notice, each Party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic between the Parties' networks. The Parties agree to retain records of call detail for six (6) months from when the calls were initially reported to the other Party. The audit will be conducted during normal business hours at an office designated by the Party being audited. Audit requests shall not be submitted more frequently than once per calendar year for each call detail type unless a subsequent audit is required. Audits shall be performed by a mutually acceptable independent auditor paid for by the Party requesting the audit. Based upon the audit, previous compensation, billing, and/or settlements will be adjusted for the past twelve (12) months. Also, if the PLU is adjusted based upon the audit results, the adjusted PLU will apply for the nine (9) month period following the completion of the audit. If, as a result of the audit, either Party has overstated the PLU or underreported the call detail usage by twenty percent (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit and will pay for the cost of a subsequent audit which is to happen within nine (9) months of the initial audit.

12.3 The Parties agree that this section does not apply to SBC SWBT, and that a negotiated Mutual Compensation Billing section would have to be added to this Appendix for any Carrier attempting to apply or "port" this Appendix to a SBC SWBT state.

13. RESERVATION OF RIGHTS AND SPECIFIC INTERVENING LAW TERMS

13.1 Intentionally Omitted.

13.2 Intentionally Omitted.

- 13.3 SBC California and CLEC agree to carry out the FCC terminating compensation plan without waiving, and expressly reserving, all appellate rights to contest FCC, judicial, legislative, or other regulatory rulings regarding ISP and Internet-bound traffic, including but not limited to, appeals of the FCC's ISP Compensation Order. By agreeing to this Appendix, both Parties reserve the right to advocate their respective positions before courts, state or federal commissions, or legislative bodies.
- 13.4 Intentionally Omitted.
- 13.5 The Parties further acknowledge that the FCC has issued a Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally. See, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92; established in Notice of Proposed Rulemaking Order No. 01-132, April 27, 2001. In the event that a final, legally binding FCC Order is issued upon the conclusion of that NPRM proceeding and during the term of this Appendix, the Parties agree to conform this Agreement to the compensation procedures set forth in that Order through a mutually agreed written Amendment to this Agreement.
- 13.6 The Parties reserve the right to raise the appropriate treatment of Voice Over Internet Protocol (VOIP) or other Internet Telephony traffic under the Dispute Resolution provisions of this Interconnection Agreement. The Parties further agree that this Appendix shall not be construed against either Party as a "meeting of the minds" that VOIP or Internet Telephony traffic is or is not local traffic subject to reciprocal compensation. By entering into the Appendix, both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Sec. 252 of the Act, commission established rulemaking dockets, or in any legal challenges stemming from such proceedings.

14. ADDITIONAL TERMS AND CONDITIONS

- 14.1 Legitimately Related Terms. Every interconnection, service and network element provided here shall be subject to all rates, terms and conditions contained in the underlying Interconnection Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and Severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; *intervening law*; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.
- 14.2 Entire Agreement. This Reciprocal Compensation Appendix is intended to be read in conjunction with the underlying Interconnection Agreement between SBC California and CLEC, but that as to the Reciprocal Compensation terms and conditions, this Appendix constitutes the entire agreement between the Parties on these issues, and there are no other oral agreements or understandings between them on Reciprocal Compensation that are not incorporated into this Appendix.

**CALIFORNIA PUBLIC UTILITIES
COMMISSION**
**Advice Letter Filing Summary Sheet
(PAL)**

(Date Filed / Received Stamp by CPUC Industry Division)

Date AL served on parties: December 5, 2005

Company Name: SBC California		CPUC Utility Number <u>U-1001 C</u>	
Address: 525 Market Street, #1944		<input checked="" type="checkbox"/> LEC <input type="checkbox"/> IEC <input type="checkbox"/> IER	
City, State, Zip: San Francisco, CA 94105		<input type="checkbox"/> CLC <input type="checkbox"/> CLR <input type="checkbox"/> CMRS	
Filing #: 27678A	Requested Effective Date: December 22, 2005	NRF Category (if applicable):	
Name:	Email Address:	Phone No.:	Fax No.:
Filer M. Noone	regtss@sbc.com	(415) 778-1299	(415) 543-3766
Certif.	regtss@sbc.com	(415) 778-1299	No. Tariff Sheets:

(Name, email address & Phone and FAX numbers are Required for "Filer")

Annual Revenues: \$ _____ **Tariff Schedules:** _____ **Keyword:** Interconnection Agreement

Subject of filing
(Service(s) included) Supplement A - to correct the Amendment Number and the cited Underlying Agreement

Authorization for filing
(Resolution #, Decision #, etc.) ALJ-181

Related service
(Other service, replacement AL filing) _____

Rate Element(s) affected and % change
(Non-recurring and / or recurring) _____

Notes/Comments
(Other information & reference to advice letter, etc.)

File Protest and/or Correspondence to:
Director, Telecommunications Division
505 Van Ness Ave., San Francisco, CA 94102
and if you have email capability, ALSO email protest to:
TD_PAL@cpuc.ca.gov
Protest also must be served on utility:
(see utility advice letter for more information)

LEC = Local Exchange Carrier
IEC = Interexchange Carrier
CLC = Competitive Local Carrier
IER = Interexchange Carrier Reseller
CLR = Competitive Local Carrier Reseller
CMRS = Commercial Mobile Radio Service

(FOR CPUC USE ONLY)

<input type="checkbox"/> WTS Required <input type="checkbox"/> Resolution Required <input type="checkbox"/> Executive Action Resolution Req'd. <input type="checkbox"/> TD Suspension on: ___ / ___ / ___ <input type="checkbox"/> Comm. Suspension on: ___ / ___ / ___ Resolution No.: T - _____ Rev. 04/01/05	Supv. / Analyst _____ / _____ Due Date to Supv.: _____ Analyst Completion Date: _____ Supervisor Approval Date: _____ AL / Tariff Effective Date: _____ Notes: _____
---	---

December 5, 2005

U 1001 C
Advice Letter No. 27678A

Public Utilities Commission of the State of California

On November 22, 2005, SBC California filed Advice Letter No. 27678 to request approval of Amendment No. 15 to the Interconnection Agreement with O1 Communications, Inc.

This supplement is now being issued to correct the Amendment Number from 15 to 3. O1 Communications, Inc. requested to adopt the Interconnection Agreement between SBC and Pac-West Telecom in Advice Letter No. 45 of O1 Communications, Inc., dated November 5, 2003. Pursuant to the parties' agreement, the adoption of the Interconnection Agreement between Pac-West Telecom and SBC California by O1 Communications, Inc. will become effective upon the approval of Amendment No. 1 (Negotiated Virtual Billing Option with Exhibit), Amendment No. 2 (Negotiated Conforming TRRO) and Amendment No. 3 (Core Communications Petition for Forbearance).

In compliance with G.O. 96-A, copies of supplement are being mailed to all LECs and to other interested parties requesting such notification. Also in compliance, we are mailing copies to parties on the service list for Resolution ALJ-181, R.93-04-003/I.93-04-002/R.95-04-043/I.95-04-044 (service list attached). We are also mailing a copy to each customer named in the contract. In addition, we are sending an e-mail copy to parties as requested. This supplement with attachments may be viewed on SBC California's Web-Site <https://net.sbc.com/calreg/>. If there are any questions regarding distribution, call 415-778-1299.

Yours truly,

SBC California

(Signature on File)

Executive Director

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

Proceeding: I9504044 - PUC - OII INTO COMPE

Filer: CPUC - LOCAL EXCHANGE SERVICE

List Name: 271/ARBITRATION

Last changed: December 2, 2005

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Attachment C

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251
AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996**

BY AND BETWEEN

**PACIFIC BELL TELEPHONE COMPANY
D/B/A SBC PACIFIC BELL TELEPHONE COMPANY**

AND

PAC-WEST TELECOMM, INC.

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**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252
OF THE TELECOMMUNICATIONS ACT OF 1996**

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (“Agreement”) is by and between Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company, a California Corporation (“PACIFIC”), and PAC-WEST TELECOMM, INC., (“Pac-West”) a California Corporation doing business at 1776 W. March Lane, Suite 250, Stockton, CA.

WHEREAS, the Parties want to interconnect their networks at mutually agreed upon points of interconnection to provide, directly or indirectly, Telephone Exchange Services and Exchange Access to residential and business end users predominantly over their respective telephone exchange service facilities in California; and

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will interconnect their networks and provide other services as required by the Telecommunications Act of 1996 (“the Act”) and additional services as set forth herein; and

WHEREAS, for purposes of this Agreement, the Parties intend to operate where PACIFIC is the incumbent local exchange carrier and Pac-West, a competitive local exchange carrier, is certified by the California Public Utilities Commission, as required.

NOW, THEREFORE, PAC-WEST and PACIFIC hereby agree as follows:

1. DEFINITIONS

1.1. “Act” means the Communications Act of 1934 [47 U.S.C. 153(R)], as amended by the Telecommunications Act of 1996.

1.2. “Affiliate” is as defined in the Act.

1.3. “AMA” means the Automated Message Accounting structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the Automated Message Accounting document published by Bellcore as GR-1100-CORE which defines the industry standard for message recording.

1.4. “Automatic Number Identification” or “ANI” is a Feature Group D or a CAMA signaling parameter that forwards the telephone (“CAMA”) or billing number (“FG-D”) of the calling party.

1.5. “Busy Line Verification Interrupt” or “BLVI” means a service in which an End User requests an operator to confirm the busy status of a line and requests an interruption of the call.

1.6. "Calling Party Number" or "CPN" is a Signaling System 7 ("SS7") parameter whereby the ten (10) digit number of the calling party is forwarded from the End Office.

1.7. "Central Office Switch" means a single switching system within the public switched telecommunications network, including the following:

(a) "End Office Switches" which are Class 5 switches where End User Exchange Services are directly connected and offered; and

(b) "Tandem Office Switches" or "Access Tandems" which are switches used to connect and switch calls over interoffice trunks between End Office Switches.

Central Offices may be employed as combination End Office/Tandem Office switches.

1.8. "CLASS Features" mean certain CCS-based features available to End Users including, but not limited to: Automatic Call Back; Call Trace; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.

1.9. "Collocation" refers to an arrangement whereby one Party's (the "Collocating Party") facilities are terminated in its equipment necessary for Interconnection or for access to Network Elements on an unbundled basis which has been installed and maintained at the premises of a second Party (the "Housing Party"). Collocation may be "physical" or "virtual." "Physical Collocation" generally refers to the Collocating Party installing and maintaining its own equipment in the Housing Party's premises. "Virtual Collocation" is defined in Appendix NIM and generally refers to the "Housing Party" owning, installing and maintaining the collocated equipment in the Housing Party's premises.

1.10. "Commission" or "CPUC" means the California Public Utilities Commission.

1.11. "Common Channel Signaling" or "CCS" is a special network, fully separate from the transmission path of the public switched network, that digitally transmits call set-up and network control data. Unless otherwise agreed by the Parties, the CCS protocol used by the Parties shall be SS7.

1.12. "Competitive Local Exchange Carriers — "CLEC" is as defined in the Act.

1.13. "Control Office" means an exchange carrier center or office designated as its company's single point of contact for the provisioning and maintenance of its portion of interconnection arrangements.

1.14. "Dialing Parity" is as defined in the Act. As used in this Agreement, Dialing Parity refers to both Local Dialing Parity and Toll Dialing Parity.

1.15. “Digital Signal Level” means one of several transmission rates in the time-division multiplex hierarchy.

1.16. “Digital Signal Level 0” or “DS-0” means the 64 Kbps zero-level signal in the time-division multiplex hierarchy.

1.17. “Digital Signal Level 1” or “DS-1” means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS-1 is the initial level of multiplexing.

1.18. “Digital Signal Level 3” or “DS-3” means the 44.736 Mbps third-level in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS-3 is defined as the third level of multiplexing.

1.19. “End User” means a third-party residence or business that subscribes to Telecommunications Services provided by either of the Parties or by another telecommunications service provider.

1.20. “Exchange Access” see Switched Access.

1.21. “Exchange Message Record” or “EMR” means the standard used for exchange of Telecommunications message information among Telecommunications Carriers for billable, non-billable, sample, settlement and study data. EMR format is contained in Bellcore Practice BR-010-200-010 CRIS Exchange Message Record.

1.22. “Fiber Meet” means an Interconnection architecture method whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually agreed-upon location.

1.23. “Interconnection” is as defined in the Act.

1.24. “Interconnection Activation Date” is the date that the construction of the joint facility Interconnection arrangement has been completed, trunk groups have been established, and joint trunk testing is completed.

1.25. “Interexchange Carrier” or “IXC” (also referred to as “Switched Access Customer”) means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services. For purposes of Section 6 of this Agreement, the term “IXC” includes any entity which purchases FGB or FGD Switched Access Service in order to originate or terminate traffic to/from Pac-West’s End Users.

1.26. “IntraLATA Toll Traffic” means those intraLATA station calls that are not defined as Local Traffic in this Agreement.

1.27. “Line Side” refers to End Office switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an ordinary subscriber’s telephone station set, a PBX, answering machine, facsimile

machine or computer). Line Side connections offer only those transmission and signal features appropriate for a connection between an End Office and such terminating station.

1.28. “Local Exchange Routing Guide” or “LERG” means a Bellcore Reference Document used by LECs and IXC’s to identify NPA-NXX routing and homing information as well as Network Element and equipment designations.

1.29. “Local Exchange Traffic” is as defined in the Act.

1.30. “Local Interconnection Trunks/Trunk Groups” are used for the termination of Local Exchange Traffic, using Bellcore Technical Reference GR-317-CORE (“GR-317”).

1.31. “Local Calls” are as defined by the Commission. Local Calls currently include all 0-12 mile calls based on the rate centers of the originating and terminating NPA-NXXs of the callers, irrespective of whether the routing point of an NPA-NXX is different than the rate center of that NPA-NXX (these include but are not limited to ZUM Zone 1 and ZUM Zone 2 calls) and, where established in incumbent LEC tariffs, ZUM Zone 3 and Extended Area Service (EAS) calls.

1.32. “Losses” means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys’ fees).

1.33. “MECAB” refers to the Multiple Exchange Carrier Access Billing (“MECAB”) document prepared by the Billing Committee of the Ordering and Billing Forum (“OBF”), which functions under the auspices of the Carrier Liaison Committee (“CLC”) of the Alliance for Telecommunications Industry Solutions (“ATIS”). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of access services provided to an IXC by two or more LECs, or by one LEC in two or more states within a single LATA.

1.34. “MECOD” refers to the Multiple Exchange Carriers Ordering and Design (“MECOD”) Guidelines for Access Services — Industry Support Interface, a document developed by the Ordering/Provisioning Committee of the Ordering and Billing Forum (“OBF”), which functions under the auspices of the Carrier Liaison Committee (“CLC”) of the Alliance for Telecommunications Industry Solutions (“ATIS”). The MECOD document, published by Bellcore as Special Report SR STS-002643, establishes methods for processing orders for access service which is to be provided to an IXC by two or more telecommunications providers.

1.35. “Meet-Point Billing” or “MPB” refers to a billing arrangement whereby two or more Telecommunications Carriers jointly provide for Switched Access Service to an IXC, with each LEC receiving an appropriate share of its switched access revenues as defined by its effective access tariffs.

1.36. “Meet Point Trunks/Trunk Groups” (“MPTGs”) are used for the joint provision of Switched Access services, utilizing Bellcore Technical References

GR-394-CORE (“GR-394”) and GR-317-CORE (“GR-317”). MPTGs are those between a local End Office and an Access Tandem as described in FSD 20-24-0000 and 20-24-0300.

1.37. “Mid-Span Meet” means an interconnection between two LECs whereby each provides its own cable and equipment up to the meet point of the cable facilities. The meet point is the demarcation establishing ownership of and responsibility for each LEC’s portion of the transmission facility.

1.38. “Network Element Bona Fide Request” or “BFR” means the process described in Appendix UNE that is attached hereto and incorporated herein that prescribes the terms and conditions relating to a Party’s request that the other Party provide a Network Element.

1.39. “Originating Line Information (“OLI”)” is an SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling party.

1.40. “Point of Interconnection” or “POI” means a physical location at which the Parties’ networks meet for the purpose of establishing interconnection. POIs include a number of different technologies and technical interfaces based on the Parties’ mutual agreement.

1.41. “Rating Point” means the Vertical and Horizontal (“V&H”) coordinates associated with a particular telephone number for rating purposes.

1.42. “Routing Point” means a location which a LEC has designated on its own network as the homing or routing point for traffic inbound to Exchange Service provided by the LEC which bears a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access services. The Routing Point need not be the same as the Rating Point, nor must it be located within the Rate Center area, but must be in the same LATA as the NPA-NXX.

1.43. “Switched Access” service means an offering of access to services or facilities for the purpose of the origination or termination of traffic from or to Exchange Service customers in a given area pursuant to a Switched Access tariff. Switched Access Services includes: Feature Group A (“FGA”), Feature Group B (“FGB”), Feature Group C (“FGC”), Feature Group D (“FGD”), Toll Free Service, 700 and 900 access. Switched Access service does not include traffic exchanged between LECs for the purpose of local exchange interconnection.

1.44. “Synchronous Optical Network” or “SONET” means an optical interface standard that allows inter-networking of transmission products from multiple vendors. The base rate is 51.84 Mbps (“OC-1/STS-1”) and higher rates are direct multiples of the base rate, up to 13.22 Gbps.

1.45. “Telephone Exchange Service” is as defined in the Act.

1.46. “Toll Free Service” means service provided with any dialing sequence that invokes toll-free, *i.e.*, 800-like, service processing. Toll Free Service includes calls to the Toll Free Service 800/888 NPA SAC codes and excludes services using standard NPA-NXX dialing patterns, irrespective of whether the routing point of the NPA-NXX is in a different rate center than the rating point of that NPA-NXX.

1.47. “Trunk-Side” refers to a Central Office Switch connection that is capable of, and has been programmed to treat the circuit as connecting to another switching entity, for example, another Central Office switch. Trunk-Side connections offer those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.

1.48. “Wire Center” means an occupied structure or portion thereof in which a Party has the exclusive right of occupancy and which serves as a Routing Point for Switched Access Service.

2. INTERPRETATION AND CONSTRUCTION

[Section Deleted]

3. IMPLEMENTATION SCHEDULE AND INTERCONNECTION ACTIVATION DATES

Subject to the terms and conditions of this Agreement, Interconnection of the Parties’ facilities and equipment pursuant to Sections 4, 5, and 6 for the transmission and routing of Telephone Exchange Service Traffic and Exchange Access Traffic shall be established for each Exchange Area on Appendix DCO attached hereto and incorporated by reference. Appendix DCO may be revised and supplemented from time to time upon the mutual agreement of the Parties to reflect the Interconnection of additional Exchange Areas by modifying or updating Appendix DCO.

4. INTERCONNECTION PURSUANT TO SECTION 251(C)(2)(A),(B),(C); 47 CFR § 51.305(A)(1)

4.1. Scope

This Section refers to the physical architecture for Interconnection of the Parties’ facilities and equipment for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic pursuant to Section 251(c)(2) of the Act. Appendix ITR (Interconnection Trunking Requirements), attached hereto and incorporated by reference prescribes the specific trunk groups (and traffic routing parameters). Appendix NIM describes the facilities for the transmission and routing of traffic as described in Appendix ITR.

4.2. Interconnection Coverage § 251(c)(2)(B) and (C), 47 CFR § 51.305(a)(2)

The Parties will provide for interconnection of their networks that is at least equal in quality to that provided by PACIFIC to itself or to any subsidiary, affiliate,

or any other party to which PACIFIC provides interconnection and shall interconnect at any technically feasible point in their network as defined in Appendix NIM, attached hereto and incorporated by reference. The Parties will establish Local Interconnection Trunks to exchange Local and IntraLATA Toll traffic. All traffic exchanged over Local Interconnection Trunk Groups will be treated as Pac-West traffic and subject to the terms and conditions of this Agreement. Neither Party shall terminate Switched Access traffic over Local Interconnection Trunks. Separate two-way Meet Point trunks will be established for the joint provisioning of Switched Access traffic. Local Interconnection will be provided via two-way trunks unless both Parties agree to implement one-way trunks on a case-by-case basis. In depth description is included in Appendix ITR.

4.2.1. The Parties shall interconnect their facilities as follows:

(a) Each Party will establish a Local Interconnection Trunk Group with each Access Tandem in the LATA(s) in which it originates or terminates Local and/or Toll traffic with the other Party. Parties may not route Local Interconnection traffic to an Access Tandem destined for an NXX that subtends another tandem. The Parties agree that direct trunking to an End Office from either Party's End Office or Access Tandem is permitted under the terms of this section.

(b) In addition to the tandem interconnection described above, either Party may establish End Office-to-End Office or End Office-to-tandem or tandem-to-tandem trunk groups. In the case of host-remote End Offices, such interconnection shall occur at the location of the host or remote, at the option of the Party deploying the host-remote End Office.

4.3. Methods for Interconnection

Methods for Interconnection and Physical Architecture shall be as defined in Appendix NIM.

5. TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE TRAFFIC PURSUANT TO SECTION 251(C)(2)(D); 252(D)(1) AND (2); 47 CFR § 51.305(A)(5)

5.1. Scope of Traffic

This Section 5 prescribes traffic routing parameters for Local Interconnection Trunk Group(s) the Parties shall establish over the Interconnections specified in Section 4.

5.1.1. Either Party may opt at any time to terminate, *i.e.*, overflow, to the other Party some or all Local Exchange Traffic and intraLATA Toll traffic originating on its network, together with Switched Access traffic, via Feature Group D or Feature Group B Switched Access Services. Either Party may otherwise purchase these Switched Access Services from the other Party subject to the rates, terms, and conditions specified in its standard intrastate access tariffs, including any usage-sensitive rates for

the Local Exchange or intraLATA Toll traffic terminated over the Switched Access service.

5.1.2. Each Party shall deliver to the other Party over the Local Interconnection Trunk Group(s) only such traffic which is destined for those publicly dialable NPA-NXX codes served by End Offices that directly subtend the Access Tandem or to those Wireless Service Providers that directly subtend the Access Tandem.

5.1.3. Unless otherwise agreed to, each Party shall deliver all traffic destined to terminate at either Party's End Office or tandem in accordance with the serving arrangements defined in the LERG Common Language Location Identifier (CLLI) Code.

5.1.4. Where the Parties deliver over the Local Interconnection Trunk Group(s) miscellaneous calls (e.g., time, weather, NPA-555, Mass Calling Codes) destined for each other, they shall deliver such traffic in accordance with the serving arrangements defined in the LERG Common Language Location Identifier Code.

5.1.5. N11 codes (e.g., 611, 811, & 911) shall not be sent between Pac-West's and PACIFIC's network over the Local Interconnection Trunk Group(s).

5.1.6. For purposes of compensation under this Agreement, the traffic traded between Pac-West and PACIFIC will be classified as either Local Traffic, Transit Traffic, IntraLATA Interexchange Traffic, or interLATA Interexchange Traffic. The Parties agree that, notwithstanding the classification of traffic under this Agreement, either Party is free to define its own "local" calling area(s) for purposes of its provision of Telecommunications Services to its End Users.

5.1.7. All Local Calls, including Local Calls originated by or terminated to any internet service provider, are subject to payment of local reciprocal compensation under the terms of this Agreement.

5.1.8. Calls originated by one Party's End User and terminated to the other Party's End User will be classified as "Local Traffic" for purposes of intercompany compensation, if they are "Local Calls" as defined by this Agreement (Section 1.31).

5.1.9. PACIFIC shall deliver all traffic destined to terminate at Pac-West's End Office in accordance with the serving arrangements defined in the Common Language Location Identifier Code, except PACIFIC will not deliver calls destined to Pac-West End Office(s) via another LEC's or CLEC's tandem.

5.1.10. PACIFIC shall terminate traffic from third party LECs, CLECs, or Wireless Service Providers delivered to PACIFIC's network through Pac-West's tandem. Prior to the routing of such traffic, the Parties agree to negotiate the issues of network capacity and forecasting caused by such termination. The Parties shall conduct such negotiations in good faith and shall not unreasonably withhold consent to the routing of such traffic.

5.1.11. PACIFIC shall complete traffic delivered from Pac-West destined to third-party LECs, CLECs or WSPs in the LATA, when these third parties subtend PACIFIC's tandem(s). PACIFIC shall have no responsibility to ensure that any third party LEC, CLEC or WSP will accept such traffic.

5.2. Responsibilities of the Parties

5.2.1. Each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the respective Parties involved.

5.2.2. Each Party will include in the information transmitted to the other for each call being terminated on the other's network, where available, the originating Calling Party Number ("CPN").

5.2.3. If the percentage of calls passed with CPN is greater than ninety percent (90%), all calls exchanged without CPN information will be billed as either Local Traffic or IntraLATA Toll Traffic in direct proportion to the minutes of use ("MOU") of calls exchanged with CPN information. If the percentage of calls passed with CPN is less than ninety percent (90%), all calls passed without CPN will be billed as Switched Access.

5.2.4. For intraLATA Toll Free Service calls where such service is provided by one of the Parties, the compensation shall be charged by the Party originating the call, rather than the Party terminating the call. This includes originating charges as well as a Basic Toll Free Access Query charge as specified in Appendix PRICING or Pac-West's local exchange tariff.

5.2.5. Each Party will calculate terminating interconnection minutes of use based on standard Automatic Message Accounting ("AMA") recordings made within each Party's network. These recordings are the basis for each Party to generate bills to the other Party.

5.2.6. Measurement of minutes of use over Local Interconnection Trunk Groups shall be in actual conversation seconds. The total conversation seconds over each individual Local Interconnection Trunk Group will be totaled for the entire monthly bill and then rounded to the next whole minute.

5.2.7. Each Party will provide the other, within thirty (30) calendar days or by mutually agreed upon date after the end of each calendar quarter, a usage report with the following information regarding traffic it sent to (*i.e.*, terminated over) the Local Interconnection Trunk arrangements.

5.2.7.1. Total traffic volume described in terms of minutes and messages and by call type (local, toll, and other) terminated to each other over the Local Interconnection Trunk Groups; and

5.2.7.2. Percent Local Usage ("PLU") and Percent Local Minutes.

5.2.8. Upon mutual agreement of the Parties, originating records for local, transit, and intraLATA toll traffic shall be exchanged for the purposes of billing intercompany terminating compensation.

5.2.8.1. On a monthly basis, each Party will record its originating MOUs including identification of the originating and terminating NXXs for all intercompany calls.

5.2.8.2. Each Party will transmit the summarized originating MOUs above to the transiting and/or terminating Party for subsequent monthly intercompany settlement billing.

5.2.8.3. Bills rendered by either Party will be paid within fifteen (15) days of receipt subject to subsequent audit verification.

5.2.8.4. MOUs for the rates contained herein will be measured in seconds by call type, and accumulated each billing period into one (1) minute increments for billing purposes in accordance with industry rounding standards.

5.2.8.5. Each Party will multiply the tandem routed and end office routed terminating MOUs by the appropriate rate contained in this Section to determine the total monthly billing to each Party.

5.3. Reciprocal Compensation for Termination of Local Traffic

5.3.1. The Compensation set forth below will apply to all Local Traffic as defined in Section 5.1.8 of this Agreement.

5.3.2. Applicability of Rates

5.3.2.1. The rates, terms, conditions in this Section 5.3 apply only to the termination of Local Traffic, unless otherwise noted in Section 5.

5.3.3. Rate Elements

5.3.3.1. The Parties will pay to one another the charges for the following rate elements for the termination of Local Traffic.

- (a) Tandem Switching — (where used) compensation for the use of tandem switching functions (which includes subtending tandem offices:
 - (i) Setup per Call, and
 - (ii) MOU;
- (b) Common Transport (“where used”) — compensation for the transmission facilities

between the local tandem and the End Offices subtending that tandem.

- (i) Fixed Mileage and
- (ii) Variable Mileage

(c) Basic Switching- Interoffice Terminating:

- (i) Setup per Call
- (ii) MOU;

5.3.4. Local Traffic Interconnection Rates

See Appendix Pricing

5.4. Reciprocal Compensation for Transit Traffic

5.4.1. Transit Traffic allows one Party to send traffic to a third party network through the other Party's tandem. A Transit Traffic rate element applies to all MOUs between a Party and third party networks that transit the other Party's tandem switch. The originating Party will be billed Transit Traffic rate element unless otherwise specified.

The Transit Traffic rate element shall be equal to the Tandem Switching rate plus two times the Common Transport Fixed rate element as specified in Appendix PRICING.

5.4.2. When Pac-West uses a PACIFIC access tandem to transit a toll call to another LEC end office, and that LEC is a member of the California Toll Pool, ("Pooling LEC"), PACIFIC will bill, and Pac-West will pay, PACIFIC's local switching and proportionate local transport rates in addition to the transit rate above. PACIFIC will remit such revenues to the California Toll Pool. When a Pooling LEC originates a toll call that terminates to a Party's NXX, Party will bill and PACIFIC will pay, Party's local switching and local transport rates as if the call originated from a PACIFIC end office.

5.4.3. If either Party receives a call through the other Party's Access Tandem that originates from another LEC, Pac-West or Wireless Service Provider, the Party receiving the transited call will not charge the other Party any rate element for this call regardless of whether the call is local or toll. The Parties will establish appropriate billing relationships directly with the Wireless Service Provider, other CLEC or LEC with the exception of the independent LECs listed in Section 21.11 of this Agreement.

5.4.4. In the event one Party originates traffic that transits the second Party's network to reach a third party telecommunications carrier with whom the originating Party does not have a traffic interchange agreement, then originating Party will indemnify the second Party against any and all charges levied by such third party telecommunications carrier, including any termination charges related to such traffic and any attorneys fees and expenses.

5.5. Reciprocal Compensation for Termination of IntraLATA Interexchange Traffic

For intrastate intraLATA interexchange service traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (“MTS”) and originating access rates for 800 Service as set forth in each Party’s Intrastate Access Service Tariff. For interstate intraLATA intercompany service traffic (*i.e.*, when a LATA crosses a state boundary), compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (“MTS”) and originating access rates for 800 Service as set forth in each Party’s Intrastate Access Service Tariff.

5.6. Compensation for Origination and Termination of Switched Access Service Traffic to or from an IXC (Meet-Point Billing (“MPB”) Arrangements)

5.6.1. The Parties will establish MPB arrangements in order to provide Switched Access Services to IXCs via PACIFIC’s Access Tandem switches in accordance with the MPB guidelines adopted by and contained in the Ordering and Billing Forum’s MECOD and MECAB documents.

5.6.2. For interstate, interLATA traffic, the Parties will charge IXCs according to access rates as set forth in each Party’s own applicable tariffs.

5.6.3. Billing to IXCs for the Switched Access Services jointly provided by the Parties via Meet-Point Billing arrangement shall be according to the multiple bill/single tariff method. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. For the purpose of this Agreement, Pac-West is the Initial Billing Company (“IBC”) and PACIFIC is the Subsequent Billing Company (“SBC”). The actual rate values for each element shall be the rates contained in that Party’s own applicable access tariffs.

5.6.4. The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (“NECA”) Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.

5.6.5. As detailed in the MECAB document, the Parties will, in accordance with accepted time intervals, exchange all information necessary to accurately, reliably, and promptly bill third Parties for Switched Access Services traffic jointly handled by the Parties via the Meet Point Arrangement. Each Party reserves the right to charge the other Party for the recording/processing functions it performs. Information shall be exchanged in Exchange Message Record (“EMR”) format, on magnetic tape or via a mutually acceptable electronic file transfer protocol.

5.6.6. Meet-Point Billing shall also apply to all jointly provided MOU traffic bearing the 900, 800, and 888 NPAs or any other non-geographic NPAs which may likewise be designated for such traffic in the future where the responsible party is an

IXC. When PACIFIC performs 800 database queries, PACIFIC will charge the service provider for the database query in accordance with standard industry practices and applicable tariffs.

5.6.7. Each Party shall coordinate and exchange the billing account reference (“BAR”) and billing account cross reference (“BACR”) numbers for the Meet Point Billing service. Each Party shall notify the other if the level of billing or other BAR/BACR elements change, resulting in a new BAR/BACR number.

5.6.8. Each Party will provide the other with the Switched Access detailed usage data within thirty (30) days of the end of the billing period. Each Party will provide to the other the Switched Access summary usage data within ten (10) working days after the date that a bill is rendered to the IXC by the initial Party. To the extent Pac-West provides PACIFIC with Access Usage Records, PACIFIC will compensate Pac-West on the same terms as Pac-West compensates PACIFIC. PACIFIC acknowledges that currently there is no charge for Summary Usage Data Records but that such a charge may be appropriate. At Pac-West’s request, PACIFIC will negotiate a mutual and reciprocal charge for provision of Summary Usage Data Records.

5.6.9. Errors may be discovered by Pac-West, the IXC or PACIFIC. Both PACIFIC and Pac-West agree to provide the other Party with notification of any discovered errors within two (2) business days of the discovery.

5.6.10. In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon at least three (3), but no more than twelve (12) months of prior usage data, if available.

5.7. Maintenance of Service

5.7.1. A Maintenance of Service charge applies whenever either Party requests the dispatch of the other Party’s personnel for the purpose of performing maintenance activity on the interconnection trunks, and any of the following conditions exist:

- (a) no trouble is found in the interconnection trunks; or
- (b) the trouble condition results from equipment, facilities or systems not provided by the Party whose personnel were dispatched; or
- (c) trouble clearance did not otherwise require dispatch and, upon dispatch requested for repair verification, the interconnection trunk did not exceed Maintenance Limits.

5.7.2. If a Maintenance of Service initial charge has been applied and trouble is subsequently found in the facilities of the Party whose personnel were dispatched, the charge will be canceled.

5.7.3. Billing for Maintenance of Service is based on each half-hour or fraction thereof expended to perform the work requested. The time worked is categorized and billed at one of the following three rates:

- (a) basic time;
- (b) overtime; or
- (c) premium time,

as defined for billing by PACIFIC in PACIFIC's revised tariff CPUC . No. 175-T and in Pac-West's Exchange tariff.

6. TRANSMISSION AND ROUTING OF SWITCHED ACCESS TRAFFIC PURSUANT TO 251(C)(2)

6.1. Scope of Traffic

Section Appendix ITR (Interconnection Trunking Requirements) attached to this Interconnection Agreement prescribes parameters for certain trunk groups ("Meet Point Trunks") to be established over the Interconnections.

7. TRANSPORT AND TERMINATION OF OTHER TYPES OF TRAFFIC

7.1. Reserved for Future Use

8. SIGNALING

8.1. The Parties will interconnect their networks using SS7 signaling as defined in GR-000317-CORE and GR-000394-CORE, including ISDN User Part ("ISUP") for trunk signaling and Transaction Capabilities Application Part ("TCAP") for CCS-based features in the interconnection of their networks. Either Party may establish CCS interconnections either directly and/or through a third party. Whether direct or by third party, CCS interconnection shall be pursuant to PUB L-780023-PB/NB. If CCS interconnection is established through a third party, the rates, terms, and conditions of the parties' respective tariffs will apply. If CCS interconnection is established directly between Pac-West and PACIFIC, the rates, terms, and conditions of Appendix SS7 will apply.

8.2. The Parties will cooperate in the exchange of TCAP messages to facilitate full interoperability of CCS-based features between their respective networks, including all CLASS features and functions, to the extent each carrier offers such features and functions to its own End Users. All CCS signaling parameters deployed by both Parties will be provided including CPN. All privacy indicators will be honored.

8.3. CCS shall be used in conjunction with Meet Point Trunks; except multifrequency ("MF") signaling will be used on a separate Meet Point Trunk Group to complete originating calls to Switched Access customers that use MF FGD signaling

protocol. MF and CCS trunk groups shall not be provided within a DS-1 facility; a separate DS-1 per signaling type must be used.

8.4. Originating FGB calls delivered to PACIFIC's tandem(s) shall use GR-317 signaling format unless the associated FGB carrier employs GR-394 signaling for its FGB traffic at the serving Access Tandem.

9. NUMBERING

9.1. Nothing in this Agreement shall be construed to limit or otherwise adversely impact in any manner either Party's right to employ or to request and be assigned any North American Numbering Plan ("NANP") number resources including, but not limited to, central office ("NXX") codes pursuant to the Central Office Code Assignment Guidelines, or to establish, by tariff or otherwise, Exchanges and Rating Points corresponding to such NXX codes. Each Party is responsible for administering the NXX codes it is assigned.

9.2. At a minimum, in those areas where Pac-West intends to provide facilities-based local exchange service, Pac-West shall obtain at least one NXX per incumbent local exchange carrier rate center which is required to ensure compliance with the industry-approved Central Office Code NXX Assignment Guidelines (April, 1997) and the FCC's Second Report and Order in CC Docket 96-116 released August 18, 1997 (Local Number Portability).

9.3. Each Party agrees to make available via the LERG, up-to-date listings of its own assigned NPA-NXX codes, along with associated Rating Points and Exchanges.

9.4. Each Party is responsible to program and update its own switches and network systems to recognize and route traffic to the other Party's assigned NXX codes at all times. Neither Party shall impose fees or charges on the other Party for such required programming and updating activities.

9.5. Each Party is responsible to input required data into the Routing Data Base Systems ("RDBS") and into the Bellcore Rating Administrative Data Systems ("BRADS") or other appropriate system(s) necessary to update the Local Exchange Routing Guide ("LERG"), unless negotiated otherwise.

9.6. Upon the request of Pac-West, PACIFIC shall perform LERG input for Pac-West. Pac-West agrees to pay PACIFIC the sum of \$110 per NXX in exchange for PACIFIC's input of required data necessary to update the Local Exchange Routing Guide ("LERG") on Pac-West's behalf. PACIFIC shall not be liable for any losses or damages arising out of errors, defects, or failures associated with the input of Pac-West's data into the LERG.

9.7. Neither Party is responsible for notifying the other Parties' End Users of any changes in dialing arrangements, including those due to NPA exhaust, unless otherwise ordered by the law, the Commission, the FCC, or a court.

9.8. NXX Migration

Where either Party has activated an entire NXX for a single End User, or activated more than half of an NXX for a single End User with the remaining numbers in that NXX either reserved for future use or otherwise unused, if such End User chooses to receive service from the other Party, the first Party shall cooperate with the second Party to have the entire NXX reassigned in the LERG (and associated industry databases, routing tables, etc.) to an End Office operated by the second Party. Such transfer will require development of a transition process to minimize impact on the Network and on the End User(s)' service and will be subject to appropriate industry lead times (currently forty-five (45) days) for movements of NXXs from one switch to another.

10. RESALE — SECTIONS 251(B)(1); 251(C)(4); 252(D)(3); AND 271(C)(2)(B)(XIV)

10.1. Availability of PACIFIC Retail Telecommunications Services for Resale

PACIFIC shall offer to Pac-West for resale at wholesale rates its Telecommunications Services, as described in Section 251(c)(4) of the Act, pursuant to the terms and conditions of Appendix RESALE attached hereto and incorporated herein by this reference.

11. UNBUNDLED NETWORK ELEMENTS — SECTIONS 251(C)(3), 271(C)(2)(B)(II),(IV),(V),(VI),(X)

Pursuant to Appendix UNE, which is attached hereto and made a part hereof, PACIFIC will provide Pac-West access to Unbundled Network Elements for the provision of a telecommunication service as required by Sections 251 and 252 of the Act and in compliance with those portions of the FCC's First Report and Order in CC Docket No. 96-98 that are in effect, subject to any modifications on reconsideration, stay or appeal, under the terms and conditions described herein and in the Appendices hereto.

12. NOTICE OF CHANGES — SECTION 251(C)(5)

Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. Both Parties will comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, as may be amended from time to time. Both Parties agree to coordinate interconnection matters consistent with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101) and with Sections 255 and 256 of the Act.

13. COLLOCATION — SECTION 251(C)(6)

13.1. PACIFIC shall provide to Pac-West Physical Collocation pursuant to Appendix PHYSICAL COLLOCATION which may be added by written amendment to this Agreement.

13.2. PACIFIC shall provide to Pac-West Virtual Collocation pursuant to Appendix NIM.

14. NUMBER PORTABILITY — SECTIONS 251(B)(2) AND 271(C)(2)(B)(XI)

The Parties shall provide Permanent Number Portability (“PNP”) on a reciprocal basis. Pursuant to the provisions in the Act and the FCC’s First Report and Order, and in accordance with the terms and conditions outlined in Appendix Number Portability, which is attached hereto and incorporated herein.

15. DIALING PARITY — SECTION 251(B)(3); 271(C)(2)(B)(XII); AND 271(E)(2)

15.1. The Parties shall provide Local Dialing Parity to each other as required under Section 251(b)(3) of the Act.

15.2. PACIFIC shall provide IntraLATA Dialing Parity in accordance with Section 271(e)(2) of the Act and Section 8 of the Commission’s regulations in Docket 97-2010.

16. ACCESS TO RIGHTS-OF-WAY — SECTION 251(B)(4) AND 271(C)(2)(B)(III)

Each Party shall provide the other Party access to its poles, ducts, rights-of-way and conduits it owns or controls, pursuant to Appendix ROW, in accordance with Section 224 of the Act on terms, conditions, and prices comparable to those offered to any other Telecommunications provider pursuant to each Party’s applicable tariffs and/or standard agreements.

17. DATABASE ACCESS — SECTION 271(C)(2)(B)(X)

In accordance with Section 27 (c)(2)(B)(x) of the Act, PACIFIC shall provide Pac-West with nondiscriminatory access to databases and associated signaling necessary for call routing and completion. Access to PACIFIC’s signaling network and call related databases will be provided as described in the following Appendices: SS7, LIDB Service, LIDB Administrative System, 800, and AIN (refer to General Terms and Conditions, Section 46.7.2). When requesting access to databases not otherwise provided for in this Agreement, or appropriate interfaces, regardless of whether they constitute Unbundled Network Elements, Pac-West will use the Network Element Bona Fide Request process. This process is defined in Appendix UNE, which is attached hereto and incorporated herein by reference.

18. INTERCEPT REFERRAL ANNOUNCEMENTS

When an End User customer changes from one Party to the other Party and does not retain its original telephone number, the Party formerly providing service to the End User will provide a referral announcement on the abandoned telephone number. This announcement will provide details on the new number to be dialed to reach this customer.

These arrangements will be provided reciprocally for the same period of time and under the same terms and conditions as either provides to its existing End User customers.

19. COORDINATED REPAIR CALLS

To avoid and minimize the potential for End User confusion, each Party shall inform their respective End Users of their respective repair bureau telephone number(s) to access such bureaus. In the event that either Party receives a misdirected repair call, the Parties agree to employ the following procedures for handling such calls:

(a) To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of local exchange service in a courteous manner, at no charge, and the End User will be provided the correct contact telephone number.

(b) In responding to repair calls, neither Party shall make disparaging remarks about the other, nor shall they use these repair calls as the basis for internal referrals, to solicit customers, or to market services, nor shall they initiate extraneous communications beyond the direct referral to the correct repair telephone number.

20. OTHER SERVICES 271(C)(B)(2)(VII) AND 271(C)(2)(B)(VIII)

20.1. White Pages

In accordance with Section 271(c)(2)(B)(viii) of the Act, PACIFIC will make nondiscriminatory access to White Pages service available under the terms and conditions of Appendix WP, attached hereto and incorporated by reference.

20.2. 911 and E911 Services

Pursuant to Section 271(c)(2)(B)(vii)(I) of the Act, PACIFIC will make nondiscriminatory access to 911 and E911 services available under the terms and conditions of Appendix 911, attached hereto and incorporated by reference.

20.3. Directory Assistance (“DA”)

Pursuant to Section 271(c)(2)(B)(vii)(II) of the Act, PACIFIC will provide nondiscriminatory access to DA services under the terms and conditions identified in Appendix DA, attached hereto and incorporated by reference.

20.4. Operator Services

Pursuant to Section 271(c)(2)(B)(vii)(III) of the Act, PACIFIC shall provide nondiscriminatory access to Operator Services under the terms and conditions identified in Appendix OS, attached hereto and incorporated by reference.

20.5. Hosting

At Pac-West's request, PACIFIC shall perform hosting responsibilities for the provision of billable message data and/or access usage data received from a CLEC for distribution to the appropriate billing and/or processing location or for delivery to a CLEC of such data via PACIFIC's internal network or the nationwide CMDS network pursuant.

20.6. Signaling System 7 Interconnection

At Pac-West's request, PACIFIC shall perform SS7 interconnection services for Pac-West pursuant to Appendix SS7, attached hereto and incorporated by reference.

20.7. Advanced Intelligent Network

One or more of the ILECs making up PACIFIC have deployed a set of AIN features and functionalities unique to the particular ILEC(s). As such, the AIN network architecture, methods of access and manner of provisioning are specific to that ILEC or those ILECs. Accordingly, any request for AIN access pursuant to this Agreement must be reviewed for technical feasibility, with all rates, terms, and conditions related to such request to be determined on an individual case basis and to be negotiated between the Parties. Upon request by Pac-West, and where technically feasible, PACIFIC will provide Pac-West with access to PACIFIC's Advanced Intelligent Network (AIN) platform, AIN Service Creation Environment (SCE) and AIN Service Management System (SMS) based upon ILEC-specific rates, terms, conditions, and means of access to be negotiated by the Parties pursuant to Section 252 of the Act, and incorporated into this Agreement by Appendix or amendment, as applicable, subject to approval by the appropriate state Commission.

21. GENERAL RESPONSIBILITIES OF THE PARTIES

21.1. Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with PACIFIC's network as referenced in Bellcore's BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

21.2. Neither Party shall use any service related to or use any of the services or elements provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's End Users. Either Party may discontinue or refuse service, but only for so long as the other Party is violating this provision. Upon such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

21.3. Each Party is solely responsible for the services it provides to its End Users and to other Telecommunications Carriers.

21.4. The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

21.5. At all times during the term of this Agreement, each Party shall keep and maintain in force at each Party's expense all insurance required by law (e.g. workers' compensation insurance) as well as general liability insurance for personal injury or death to any one person, property damage resulting from any one incident, and automobile liability with coverage for bodily injury for property damage. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self insurance).

21.5.1. Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$100,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$100,000 for Bodily Injury by disease-each employee.

21.5.2. Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$2,000,000 are also required if this Agreement involves collocation. The other Party must be named as an Additional Insured on the Commercial General Liability policy.

21.5.3. If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.

21.5.4. Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 21.5.7 through 21.5.7.03 of this Agreement.

21.5.5. The Parties agree that companies affording the insurance coverage required under Section 21 shall have a rating of B+ or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.

21.5.6. Each party must request from its insurance company a 30 day advance notice of insurance cancellation. If a Party receives notice of cancellation from its insurer, that Party shall immediately provide such notice to the other Party. The other

Party must receive such notification within one (1) business day from the first Party's receipt of cancellation notification.

21.5.7. Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:

21.5.7.1. The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and

21.5.7.2. The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and

21.5.7.3. The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.

21.5.8. This Section 21.5 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.

21.6. Unless otherwise stated, each Party will render a monthly bill to the other for service(s) provided hereunder. Remittance in full will be due within fifteen (15) days of that billing date. Interest shall apply on overdue amounts (other than disputed amounts which are subject to Section 30.12) at the rate specified in Section 30.12, unless otherwise specified in an applicable tariff. Each Party reserves the right to net delinquent amounts against amounts otherwise due the other.

21.7. PACIFIC participates at OBF to develop standardized methods and shall implement ordering and billing formats/processes consistent with industry guidelines as capabilities are deployed. Where such guidelines are not available or PACIFIC decides not to fully utilize industry guidelines, PACIFIC will provide Pac-West with information on its ordering and billing format/process and requirements at the earliest practicable time.

21.8. For the purposes of establishing provisioning and billing service to Pac-West, Pac-West is required to provide to PACIFIC its PACIFIC authorized and nationally recognized OCN for facilities-based business (interconnection and/or Unbundled Network Elements) in PACIFIC. Pac-West name associated with specific OCN must be consistent in PACIFIC.

21.9. Unless otherwise agreed, if the designated Party fails to file the jointly signed agreement with the Commission within thirty (30) days of both Parties signatures, then the signed agreement is null and no longer valid. If the contract becomes null, either Party can initiate negotiations to a new agreement.

22. EFFECTIVE DATE, TERM, AND TERMINATION

22.1. This Agreement shall be effective upon approval by the CPUC (the “Effective Date”).

22.2. The term of this Agreement shall be three (3) years and shall commence upon the Effective Date. Absent the receipt by one Party (“Receiving Party”) of written notice from the other Party 365 calendar days, but in no event less than 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 22.3, below. To the extent that the contract continues in effect beyond the three year date for any reason, during such period each Party shall continue to perform its obligations and provide the services described herein that are to be included in the successor agreement until such time as the latter agreement becomes effective; provided however, the terms and conditions applying to services, UNEs, reciprocal compensation and interconnection beyond the three year date shall be governed by, and true-up to, the negotiated/arbitrated provisions that succeed the original three year term. Renegotiations shall commence no later than 45 days after the notice of nonrenewal and renegotiation is received by the Receiving Party.

22.3. Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement after written notice thereof that disrupts the operation of either Party’s network and/or End User service and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof.

22.4. If pursuant to Section 22.2, above, this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement ninety (90) days after delivering written notice to the other Party of its intention to terminate this Agreement, subject to Section 22.5, below. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 22.4 other than its obligations under Section 22.5, below.

22.5. Upon termination or expiration of this Agreement in accordance with this Section 22, above:

22.5.1. each Party shall comply immediately with its obligations set forth in Section 30.6, below; and

22.5.2. each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement; and

22.5.3. each Party 's indemnification obligations shall survive.

22.6. No remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable law or otherwise.

23. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NEITHER PACIFIC NOR PAC-WEST ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

24. CHANGES IN END USER LOCAL EXCHANGE SERVICE PROVIDER SELECTION

Each Party will abide by applicable state or federal laws and regulations in obtaining End User authorization prior to changing End User's local service provider to itself and in assuming responsibility for any applicable charges as specified in Section 258(b) of the Telecommunications Act of 1996. Pac-West shall make authorization available to PACIFIC upon request and at no charge. Only an End User can initiate a challenge to a change in its local exchange service provider. If an End User notifies PACIFIC or Pac-West that the End User requests local exchange service, the Party receiving such request shall be free to immediately provide service to such End User. When an End User changes or withdraws authorization, each Party shall release customer-specific facilities in accordance with the End User's direction or the End User's authorized agent. Further, when an End User abandons the premise, PACIFIC is free to reclaim the unbundled network element facilities for use by another customer and is free to issue service orders required to reclaim such facilities.

25. SEVERABILITY

25.1. The Parties negotiated the services, arrangements, Interconnection, terms, and conditions of this Agreement as a total arrangement and it is intended to be nonseverable, subject only to Section 30.16 of this Agreement.

25.2. In the event the Commission, the FCC, or a court rejects any portion or determines that any provision of this Agreement is contrary to law, or is invalid or unenforceable for any reason, the Parties shall continue to be bound by the terms of this Agreement, insofar as possible, except for the portion rejected or determined to be unlawful, invalid, or unenforceable. In such event, the Parties shall negotiate in good faith to replace the rejected, unlawful, invalid, or unenforceable provision and shall not

discontinue service to the other Party during such period if to do so would disrupt existing service being provided to an End User. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of federal or state law, or any regulations or orders adopted pursuant to such law.

26. INTELLECTUAL PROPERTY

PACIFIC as the provider of the Unbundled Network Elements will provide all features, functions, and capabilities of the individual elements. PACIFIC will provide a list of all vendors/licensors applicable to the subject Unbundled Network Element(s) (which vendors have provided PACIFIC a software license) within seven (7) days of a request for such a list by Pac-West. PACIFIC agrees to use its best efforts to facilitate the obtaining of any necessary license or right to use agreement. PACIFIC makes no warranties, express or implied, concerning Pac-West's (or any third party's) rights with the respect to use of intellectual property (including without limitation, patent, copyright, and trade secret rights). PACIFIC reserves the right to amend the Intellectual Property provision of this Agreement to reflect the FCC ruling (and any appeal therefrom) in CC Docket No. 96-98 (File No. CCBPol 97-4), In the Matter of Petition of MCI for Declaratory Ruling.

27. INDEMNIFICATION

27.1. Except as otherwise provided herein or in specific appendices, each Party shall be responsible only for service(s) and facility(ies) which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the service(s) and facility(ies) provided by the other Party, its agents, subcontractors, or others retained by such parties.

27.2. Except as otherwise provided herein or in specific appendices, and to the extent not prohibited by law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any loss to a third party arising out of the negligence or willful misconduct by such Indemnifying Party, its agents, its End User, contractors, or others retained by such parties, in connection with the indemnifying provision of services or functions under this Agreement.

27.3. In the case of any loss alleged or made by an End User of either Party, the Party whose End User alleged or made such loss ("Indemnifying Party") shall defend and indemnify the other Party ("Indemnified Party") against any and all such claims or loss by its End Users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the gross negligence or intentional misconduct of the other ("Indemnified") Party.

27.4. Pac-West agrees to indemnify, defend, and hold PACIFIC harmless from any loss arising out of PACIFIC's provision of 911 services to Pac-West or out of Pac-West's End Users' use of the 911 service, whether suffered, made, instituted, or asserted

by Pac-West or its End Users, including for any personal injury or death of any person or persons, except for loss which is the direct result of PACIFIC'S own negligence or willful misconduct.

27.5. PACIFIC shall not be liable for damages to an End User's premises resulting from the furnishing of unbundled elements, including the installation and removal of equipment and associated wiring, unless the damage is caused by PACIFIC's negligence or willful misconduct. PACIFIC does not guarantee or make any warranty with respect to unbundled elements when used in an explosive atmosphere.

27.6. Each Party shall be indemnified, defended, and held harmless by the other Party against any loss arising from a Party's use of services or elements provided under this Agreement involving:

- (a) tort claims, including claims for libel;
- (b) slander;
- (c) invasion of privacy; or
- (d) infringement of copyright arising from a Party's own communications or the communications of its End Users.

This includes, but is not limited to, suits arising from disclosure of any customer-specific information associated with either the originating or terminating numbers used to provision unbundled elements provided hereunder or all other claims arising out of any act or omission of the End User in the course of using services or functions provided pursuant to this Agreement.

27.7. The Indemnifying Party agrees to defend any suit brought against the Indemnified Party for any loss identified in this Section or specific appendices. The Indemnified Party agrees to notify the Indemnifying Party promptly in writing of any written claims, lawsuits or demands for which the Indemnifying Party may be responsible under this Agreement. The Indemnified Party shall cooperate in every reasonable way to facilitate defense or settlement. The Indemnifying Party shall have the right to control and conduct the defense and settlement of any action or claim subject to the consultation of the Indemnified Party. The Indemnifying Party shall not be responsible for any settlement unless the Indemnifying Party approved such settlement in advance and agrees to be bound by the settlement agreement.

27.8. Pac-West acknowledges that its right under this contract to interconnect with PACIFIC's network and to unbundle and/or combine PACIFIC's network elements (including combining with Pac-West's network elements) may be subject to or limited by intellectual property (including, without limitation, patent, copyright, and trade secret rights) and contract rights of third parties. It is the sole obligation of Pac-West to obtain any consents, authorizations, or licenses under intellectual property or proprietary rights held by third parties that may be necessary for its use of PACIFIC network facilities under this Agreement. PACIFIC hereby conveys no licenses to use such intellectual

property rights and makes no warranties, express or implied, concerning Pac-West's (or any third party's) rights with respect to such intellectual property and contract rights, including, without limitation, whether such rights will be violated by such interconnection or unbundling and/or combining of elements (including combining with Pac-West's network elements) in PACIFIC's network. PACIFIC does not and shall not indemnify or defend, nor be responsible for indemnifying or defending Pac-West for any liability losses, claims, costs, damages, demand, penalties, or other expenses arising out of, caused by, or relating to Pac-West's interconnection with PACIFIC's network and unbundling and/or combining PACIFIC's network elements (including combining with Pac-West's network elements).

27.9. Pac-West agrees to indemnify and hold PACIFIC harmless from and against all liability, losses, claims, costs, damages, demand, penalties, or other expenses, including but not limited to costs of litigation and reasonable attorneys fees, arising out of, caused by, or relating to any real or potential claim, demand, or action that Pac-West's interconnection with PACIFIC's network, or Pac-West's use of services or functions offered hereunder, or unbundling and/or combining of PACIFIC's network elements (including combining with Pac-West's network elements) violates or infringes upon any intellectual property rights of any third party or constitutes a breach of contract. Pac-West shall notify PACIFIC in writing within ten (10) days after Pac-West receives notification of any claim or suit subject to this provision. PACIFIC shall undertake and control the defense and settlement of any such claim or suit and Pac-West shall cooperate fully with PACIFIC in connection herewith. In no event shall PACIFIC be liable for any consequential damages or loss of profits which Pac-West may suffer arising out of same.

27.10. Pac-West shall reimburse PACIFIC for damages to PACIFIC facilities utilized to provide unbundled elements hereunder caused by the negligence or willful act of Pac-West or resulting from Pac-West's improper use of PACIFIC facilities, or due to malfunction of any facilities or equipment provided by other than PACIFIC. Nothing in the foregoing provision shall be interpreted to hold one Pac-West liable for another local service provider or End User's actions. Upon reimbursement for damages, PACIFIC will cooperate with Pac-West in prosecuting a claim against the person causing such damage. Pac-West shall be subrogated to the right of recovery by PACIFIC for the damages to the extent of such payment.

28. LIMITATION OF LIABILITY

28.1. Except for indemnity obligations under this Agreement, or except as otherwise provided in specific appendices, each Party's liability to the other Party for any loss relating to or arising out of any negligent act or omission in its performance under this Agreement, whether in contract or tort, shall not exceed in total the amount PACIFIC or Pac-West has to or would have charged the other Party for the affected service(s) or function(s) which were not performed or were otherwise improperly performed.

28.2. Except for losses alleged or made by an End User of either Party, or except as otherwise provided in specific appendices, in the case of any loss alleged or made by a third party arising under the negligence or willful misconduct of both Parties,

each Party shall bear, and its obligation under this section shall be limited to, that portion (as mutually agreed to by the Parties) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.

28.3. In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental, or punitive damages, including but not limited to, loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted, or done hereunder (collectively, “Consequential Damages”), even if the other Party has been advised of the possibility of such damages; provided that the foregoing shall not limit a Party’s obligation under this Agreement to indemnify, defend, and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorney’s fees) and Consequential Damages of such third party.

29. REGULATORY APPROVAL

29.1. The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC. The Parties believe in good faith and agree that the terms in this Agreement, to which they have agreed (*i.e.*, excluding arbitrated provisions) are not inconsistent with the specifically mentioned sections of the Act and are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification.

30. MISCELLANEOUS

30.1. Authorization

30.1.1. PACIFIC is a corporation duly organized, validly existing and in good standing under the laws of the State of California and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

30.1.2. Pac-West is a corporation duly organized, validly existing and in good standing under the laws of the State of California and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

30.2. Compliance and Certification

30.2.1. Each Party shall comply with all federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

30.2.2. Each Party warrants that it has obtained all necessary state certification required in those states in which it has ordered services from the other Party pursuant to this Agreement. Upon request by any state governmental entity, each Party shall provide proof of certification.

30.2.3. Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the Communications Law Enforcement Act (“CALEA”). Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party’s sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities, and services fully comply with CALEA.

30.3. Law Enforcement

PACIFIC and Pac-West shall handle law enforcement requests as follows:

(a) Intercept Devices:

Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with an End User of the other Party, it shall refer such request to the Party that serves such End User, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party’s facilities, in which case that Party shall comply with any valid request.

(b) Subpoenas:

If a Party receives a subpoena for information concerning an End User the Party knows to be an End User of the other Party, it shall refer the subpoena to the requesting party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the Party was the End User’s service provider, in which case the Party will respond to any valid request.

(c) Emergencies:

If a Party receives a request from a law enforcement agency for temporary number change, temporary disconnect, or one-way denial of outbound calls for an End User of the other Party by the receiving Party’s switch, that Party will comply with a valid emergency request. However, neither Party shall be held liable for any claims or damages arising from compliance with such requests on behalf of the other Party’s End User and the Party serving such End User agrees to indemnify and hold the other Party harmless against any and all such claims.

30.4. Independent Contractor

Each Party and each Party’s contractor shall be solely responsible for the withholding or payment of all applicable federal, state and local income taxes, social security taxes, and other payroll taxes with respect to its employees, as well as any taxes, contributions, or other obligations imposed by applicable state unemployment or workers’ compensation acts. Each Party has sole authority and responsibility to hire, fire, and otherwise control its employees.

30.5. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations related to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause of nonperformance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.

30.6. Confidentiality

30.6.1. All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data:

(a) furnished by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") dealing with customer-specific, facility-specific, or usage-specific information, other than customer information communicated for the purpose of publication or directory database inclusion, 911, call processing, billing or settlement or as otherwise mutually agreed upon; or

(b) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary"; or

(c) communicated orally and declared to the Receiving Party at the time of delivery, or by written notice given to the Receiving Party within ten (10) days after declaration to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the Disclosing Party.

30.6.2. Upon request by the Disclosing Party, the Receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic, or otherwise. In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement.

30.6.3. Each Party shall keep all the other Party's Proprietary Information confidential in the same manner in which it keeps its own Proprietary

Information confidential, and shall use the other Party's Proprietary Information only for performing the covenants contained in the Agreement and shall disclose such Proprietary Information only to those employees, contractors, agents or Affiliates who have a need to know. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.

30.6.4. Unless otherwise agreed, the obligations of confidentiality and nonuse set forth in the Agreement do not apply to such Proprietary Information that:

(a) was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party;

(b) is, or becomes publicly known through no wrongful act of the receiving Party;

(c) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information;

(d) is independently developed by an employee, agent, or contractor of the Receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information;

(e) is disclosed to a third person by the Disclosing Party without similar restrictions on such third person's rights;

(f) is approved for release by written authorization of the Disclosing Party;

(g) is required to be made public by the Receiving Party pursuant to applicable law or regulation provided that the Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then either seek appropriate protective relief from all or part of such requirement or, if it fails to successfully do so, it shall be deemed to have waived the Receiving Party's compliance with Section 30.6 with respect to all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain. Notwithstanding the foregoing, PACIFIC shall be entitled to disclose confidential information on a confidential basis to regulatory agencies upon request for information as to PACIFIC's activities under the Act.

30.6.5. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information

furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

30.6.6. Pursuant to Section 222(b) of the Act, both Parties agree to limit their use of Proprietary Information received from the other to the permitted purposes identified in the Act.

30.7. Governing Law

For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with such Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of California without reference to conflict of law provisions.

30.8. Taxes

30.8.1. Each Party purchasing Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either party's corporate existence, status, or income or (b) any corporate franchise Taxes. Whenever possible, Taxes shall be billed as a separate item on the invoice.

30.8.2. With respect to any purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement if any Tax is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills the purchasing Party for such Tax, or (2) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.

30.8.3. With respect to any purchase hereunder of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement that are resold to a third party, if any Tax is imposed by Applicable Law on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.

30.8.4. If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty, and interest.

30.8.5. If the purchasing Party fails to impose and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.

30.8.6. If either Party is audited by a taxing authority or other Governmental Authority, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

30.8.7. To the extent a sale is claimed to be for resale and thus subject to tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If Applicable Law excludes or exempts a purchase of Interconnection, Resale Services, Network Elements, functions, facilities, products, and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption

certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost, or expense with respect to forbearing to collect such Tax.

30.8.8. With respect to any Tax or Tax controversy covered by this Section 30.8, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.

30.8.8.1. All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 30.8 shall be sent in accordance with Section 30.14 hereof.

30.9. Non-Assignment

Each Party covenants that, if it sells or otherwise transfers to a third party its Telephone Exchange and Switched Access network facilities within any territory within which PACIFIC is an Incumbent Local Exchange Carrier (“PACIFIC’s Territory”) as of the date of this Agreement, or any portion thereof, to a third party, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party; provided that each Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prompt written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties’ respective successors and assigns.

30.10. Non-Waiver

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

30.11. Audits

Each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the respective Parties involved.

30.11.1. Upon reasonable written notice and at its own expense, each Party or its authorized representative (providing such authorized representative does not have a conflict of interest related to other matters before one of the Parties) shall have the right to conduct an audit of the other Party to give assurances of compliance with the provisions of this Agreement; provided, that neither Party may request more than two (2) such audits within any twelve (12) month period. This includes on-site audits at the other Party's or the Party's vendor locations. Each Party, whether or not in connection with an audit, shall maintain reasonable records for a minimum of twenty-four (24) months and provide the other Party with reasonable access to such information as is necessary to determine amounts receivable or payable under this Agreement. Each Party's right to access information for audit purposes is limited to data not in excess of twenty-four (24) months in age.

30.12. Disputed Amounts

30.12.1. Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of:

- (a) one and one-half percent (1-1/2%) per month; or
- (b) the highest rate of interest that may be charged under applicable law.

30.13. Dispute Resolution.

30.13.1. Alternative to Litigation.

Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, the Parties agree to use the following alternative dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

30.13.2. Informal Dispute Resolution Negotiations.

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit or agency proceeding without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or

otherwise admissible, be admitted in evidence, in the arbitration, agency proceeding or lawsuit.

30.13.3. Formal Dispute Resolution.

Subject to Section 30.7, if the Parties are unable to resolve the dispute through negotiations, then either Party may invoke the formal Dispute Resolution procedures described herein. Unless agreed among the Parties, formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Dispute Resolution. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency proceeding.

30.13.4. Arbitration.

If the negotiations do not resolve the dispute within sixty (60) business days of the initial written request, and both Parties agree to submit the dispute to Arbitration, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) then in effect except that the Parties may select an arbitrator outside AAA rules upon mutual agreement. A Party may demand such arbitration in accordance with the procedures set out in those rules. The Parties shall mutually agree upon a discovery plan including the type and number of interrogatories and depositions allowed. If unable to agree on the discovery plan the Parties will ask the arbitrator to issue an arbitration plan consistent with the AAA rules. The arbitration hearing shall be commenced within sixty (60) business days of the demand for arbitration. The arbitration shall be held in a mutually agreeable city. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) business days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

30.13.5. Expedited Arbitration Procedures.

If the issue to be resolved through the negotiations referenced in Sections 30.13.2 and 30.13.3 directly and materially affects service to either Party’s End Users, then the period of resolution of the dispute through negotiations before the dispute is to be submitted to binding arbitration or other remedy proceeding shall be five (5) business days. When such a service affecting dispute is submitted to arbitration, the arbitration shall be conducted pursuant to the expedited procedures rules of the Commercial Arbitration Rules of the AAA (i.e., rules 53 through 57) then in effect.

30.13.6. Costs.

Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the costs of production of

documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.

30.13.7. Continuous Service.

The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and each Party shall continue to perform its obligations (including making payments in accordance with this Agreement).

30.13.8. No Conflict

The Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the state commission with regard to procedures for the resolution of disputes arising out of this Agreement. In the event of any such conflict, the requirements of the Act or the Commission shall control.

30.14. Notices

Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally; on the date receipt is acknowledged in writing by the recipient if delivered by regular mail; or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Notice may also be provided by facsimile, which shall be effective on the next Business Day following the date of transmission as reflected in the facsimile confirmation sheet. "Business Day" shall mean Monday through Friday, PACIFIC/Pac-West holidays excepted. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section.

NOTICE CONTACT	PAC-WEST CONTACT	PACIFIC CONTACT
NAME/TITLE	Mart McCann	Contract Administration ATTN: Notices Manager
STREET ADDRESS	1776 West March Lane, Ste 250	311 S. Akard, 9 th Floor Four Bell Plaza
CITY, STATE, ZIP CODE	Stockton, CA 95207	Dallas, TX 75202-5398
TELEPHONE NUMBER	209 926-4224	NA
FAX NUMBER	209 926-4585	214-464-2006

30.15. Publicity and Use of Trademarks or Service Marks

30.15.1. The Parties agree not to use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for

written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party.

30.15.2. Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for commercial purposes without prior written approval.

30.16. Section 252(i) Obligations

If Pacific enters into an agreement (the "Other Agreement") approved by the Commission or FCC pursuant to Section 252 of the Act (regardless of whether the approved agreement was negotiated or arbitrated) which provides for the provision of any individual interconnection, service, or network element arrangement covered in this Agreement to another requesting Telecommunications Carrier, including an Affiliate, Pacific shall make available to Pac-West such individual interconnection, service, or network element arrangement upon the terms and conditions provided in the Other Agreement which are legitimately related to the purchase of the individual element being sought. Pac-West shall notify Pacific in writing of the terms and conditions which it desires to incorporate into this Agreement, and Pacific shall submit the request by advice letter to the Commission for approval within 30 days after such notice from Pac-West. At its sole option, Pac-West may also avail itself of the Other Agreement in its entirety. Nothing in this Section 30.16 is intended to or shall be construed to restrict in any manner any Party's rights pursuant to Section 252 of the Act or any regulations adopted thereunder.

30.17. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

30.18. Intervening Law

This Agreement is entered into as a result of both private negotiation between the Parties and the incorporation of the results of arbitration by the California Public Utilities Commission. If the actions of the State of California or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction, including but not limited to the United States Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Bd.*, 1999 WL 24568 (U.S.), and any remand thereof, invalidate, modify, or stay the enforcement of laws or regulations that were the basis for a provision of this Agreement, the affected provision shall be invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency. In such event, the Parties shall expend

diligent efforts to arrive at an agreement respecting the modifications to the Agreement which must be included in a written amendment signed by both Parties.. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to *AT&T Corp. v. Iowa Utilities Bd.*, 1999 WL 24568 (U.S.), or the outcome of any remand thereof including its rights under this paragraph. Finally, whenever a tariffed rates is cited or quoted, it is understood that said cite incorporates any changes to said tariffs as required by the Telecommunications Act of 1996.

30.19. No Third Party Beneficiaries; Disclaimer of Agency

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

30.20. No License

No license under patents, copyrights or any other intellectual property right (other than the limited license to use consistent with the terms, conditions, and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

30.21. Survival

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

30.22. Scope of Agreement

This Agreement is intended to describe and enable specific Interconnection and compensation arrangements between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided herein.

30.23. Entire Agreement

The terms contained in this Agreement and any Schedules, Exhibits, Appendices, tariffs, and other documents or instruments referred to herein, which are incorporated into this Agreement by this reference, constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals, and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified in writing signed by an officer of each Party.

PAC-WEST TELECOMM, INC.

**Pacific Bell Telephone Company d/b/a
SBC Pacific Bell Telephone Company
By SBC Telecommunication, Inc.
Its authorized agent**

Signature: _____

Signature: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title: President – Industry Markets

Date: _____

Date: _____

Attachment D



Date: **July 11, 2003** Number: **CLECC03-113**
Effective Date: **August 1, 2003** Category: **Interconnection**
Subject: **(BUSINESS PROCESSES) Notice of Offer in Conjunction with the Adoption of FCC's Interim ISP Terminating Compensation Plan by SBC California**
Related Letters: **N/A** Attachment: **N/A**
States Impacted: **California**
Response Deadline: Contact: **SBC Negotiator**
Conference Call/Meeting: **N/A**

As provided by the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the "ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002), Pacific Bell Telephone Company d/b/a SBC California ("SBC California") hereby offers to exchange all Section 251(b)(5) traffic on and after August 1, 2003 in accordance with the rates, terms and conditions of the FCC's interim ISP terminating compensation plan in the state of California. SBC California makes this offer for all Section 251(b)(5) traffic and ISP-bound traffic exchanged in California, as ordered by the FCC in paragraph 89 of the ISP Compensation Order.

To effectuate an acceptance of this offer in California, an amendment to your Interconnection Agreement will be required. Your attention is directed to the following website, where a Reciprocal Compensation Amendment for ISP-Bound Traffic and Federal Communications Act Section 251(b)(5) Traffic (Adopting FCC's Interim ISP Terminating Compensation Plan) ("Amendment") per state, in accordance with the requirements of the FCC's interim ISP terminating compensation plan contained in the ISP Compensation Order, may be accessed for your review:

<https://clec.sbc.com/clec/shell.cfm?section=115>

If you choose to accept this offer in California, complete the Order Notification form also available on the website with complete and accurate information, and fax the completed and signed form to SBC Contract Management at 1-800-404-4548 to order a signature ready version of the Amendment for the applicable state that SBC Contract Management will prepare for execution by your company. Your execution and delivery of the Amendment to the following address shall constitute an acceptance of the offer contained in this Accessible Letter for that state. Please deliver two original, signed copies of the Amendment to the following address for proper execution and filing:

SBC Contract Management
311 South Akard
9th Floor
Dallas, TX 75202

If you fax the Order Notification form to SBC Contract Management, as provided above, on or before **August 1, 2003**, and if the Amendment is executed by your company and the appropriate signed originals are received by SBC Contract Management on or before **August 23, 2003**, as

provided above, the Amendment will become effective on August 1, 2003,¹ conditioned upon state commission approval; otherwise, the Amendment will become effective ten (10) days after approval by the state commission or after the Amendment is deemed to have been approved by such commission.

If you have any questions, please do not hesitate to contact your SBC Negotiator.

¹ However, the rates will not be implemented until after state commission approval, at which time the rates billed by the Parties beginning August 1, 2003, will be subject to true-up.

